

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR RESPONDENT

960

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 23,762

IRA F. GADD,

Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION,

Respondent,

D. C. TRANSIT SYSTEM, INC.,

Intervenor.

PETITION TO REVIEW ORDERS OF THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

United States Court of Appeals
for the District of Columbia Circuit

FILED MAR 29 1977

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STATUTE

Washington Metropolitan Area Transit Regulation
Compact, Public Law 86-794, 74 Stat. 1031;
D.C. Code Section 1-1410

REFERENCE TO RULINGS

The following orders of the Washington Metropolitan Area Transit Commission have been referred to in this brief:

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STATEMENT OF THE ISSUES

Petitioner (Gadd) has not set out a statement of issues. We believe that there is but one issue properly before this Court.

1. Was the Commission revocation of Gadd's certificate of public convenience and necessity reasonable and proper?

STATEMENT OF THE CASE

Washington Metropolitan Area Transit Commission
Certificate of Public Convenience and Necessity No. 16,
was issued April 22, 1966, pursuant to the Washington
Metropolitan Area Transportation Compact.^{1/} In it Ira F.
Gadd, d/b/a Columbia Sightseeing Company, was authorized
to operate sightseeing services originating in Alexandria
or Arlington, Virginia.^{2/} By Order No. 973, the Commission
revoked that certificate, effective October 21, 1969.
This appeal is taken from that revocation order, and from
subsequent Commission refusal to reconsider it.

^{1/} Public Law 86-794 74 Stat. 1031; D.C. Code Section 1-1410

^{2/} IRREGULAR ROUTES:

Passengers and their baggage:

SPECIAL OPERATIONS;

Round-trip, or one-way sightseeing tours;

From points in the City of Alexandria and
Arlington County, Virginia, to points in
the District of Columbia, and points in
the City of Alexandria, Arlington and
Fairfax Counties, Virginia, via the
District of Columbia.

RESTRICTED: to the performance of such trans-
portation in vehicles having a seating capacity
of not more than seventeen (17) passengers.

Gadd made timely filing for grandfather rights on June 20, 1961. On August 8, 1963, he further applied for a certificate on the alternate grounds of public convenience and necessity. In both applications he sought rights to perform charter and sightseeing services anywhere within the Metropolitan District.^{3/} The Commission denied both applications by Order No. 397, decided September 4, 1964. On appeal, this court affirmed as to the denial of grandfather rights, but reversed on the public convenience and necessity finding on the ground that it was without substantial supporting record evidence, Gadd v. Washington Metropolitan Area Transit Commission 121 U.S. App. D. C. 7, 347 F2d 791 (CA D.C., 1965).

As a result of the remand in that case, Certificate No. 16 in its present form was issued effective April 22, 1966. Gadd did not seek reconsideration of the scope of this certificate grant.

It would not appear that Gadd ever operated within the bounds of his Certificate. Less than a year after it became effective the Commission staff, in response to

^{3/} The geographic area subject to Commission regulation, Compact Article I

public complaints, had undertaken an investigation of Gadd operations. On January 10, 1968, on the basis of a staff recommendation following its investigations, the Commission issued Order No. 768, directing Gadd to show cause why he should not be deemed to have knowingly and willfully violated the Compact and Commission Rules and Regulations by: 1) engaging in for hire transportation not authorized by his certificate, 2) charging unauthorized fares, and 3) failing to file required data with the Commission.

Prior to hearing on the above charges, Gadd, by his attorney, submitted an Offer of Settlement and Proposal of Adjustment in which he admitted to each of the violations alleged and certified that he would cease and desist from all such unlawful activity. By Order No. 782, issued February 28, 1968, the Commission accepted Gadd's Offer of Settlement, and further gave notice that any future violation of his promise to cease and desist the enumerated violations would constitute a willful violation of Order No. 782.

On July 26, 1968, Gadd filed Application No. 511, marked as Docket No. 181, for an expansion of his certificate to include authority for irregular route, charter,

and special operations anywhere within the Metropolitan District, and for removal of its restriction to vehicles seating not more than 17 passengers. A public hearing was set, and twice postponed at the request of the applicant. Nine certificated carriers appeared to protest the application.

The record developed at the hearing disclosed that within four months of the Commission's acceptance of Gadd's promise to operate within the scope of his certificate, he had broken that pledge and was again operating outside the scope of his certificate authority.^{4/} The violations continued throughout the period that hearings were being held on his application. He admitted to those violations and asserted that they would continue.^{5/}

At the conclusion of the proceedings on Gadd's certificate application, the Commission issued two orders. Order No. 890, issued December 9, 1968, denied Gadd's application on the ground that he had shown himself unfit to receive authority to operate additional services.

^{4/} Docket No. 181, Gadd exhibit 1 (A-40)
^{5/} Docket No. 181, Tr. p. 60 (A-38)

The Commission found:

"For a period of from June through October of 1968, he [Gadd] had originated trips with 434 passengers in Virginia and 564 passengers in the District of Columbia. Of the Virginia trips, the evidence of record indicated that some of them were likewise originated beyond the scope of applicant's certificate. Applicant openly admitted that he did not have the authority to operate trips which originated in the District of Columbia, that he was aware of this at the time he made the trips, and that he would continue to conduct such operations regardless of the outcome reached herein. [emphasis added] Order No. 890, p. 2 (A-17)

In addition to its denial of Gadd's request for expanded authority, the Commission felt constrained by its above findings to institute proceedings against Gadd for continued, intentional violations of the Compact, and Order No. 782. Consequently, on December 9, 1968, it also issued Order No. 891, establishing Docket No. 193, and ordering Gadd to show cause why his certificate should not be revoked.

Hearings in Docket No. 193 commenced February 28, 1970⁶⁹, but by Order No. 933 were continued until April 21, 1970⁶⁹, at the request of Gadd's attorney, who sought both

additional time to prepare himself, and another specific cease and desist order as notice for his client. Without conceding that Gadd was entitled to such additional notice, Order No. 933 again ordered Gadd to comply with his certificate. However, at the April hearing Gadd testified that he was knowingly and intentionally continuing to engage in unauthorized operations.^{6/} He stated that due to operational changes by his competitors, he could not make a living under his certificate.

The Commission held that even had an economic basis for an enlarged scope of operations been shown, that would not constitute justification for "willful and deliberate violation of the Compact or of lawfully binding Commission orders."^{7/} Therefore, by Order No. 973, Certificate of Public Convenience and Necessity No. 16 was revoked, effective October 21, 1969. Order No. 982 elaborated on the Commission's reasoning but denied Gadd's Petition for Reconsideration. A motion for Stay Pending Appeal was denied by Order No. 991, and a motion for similar relief was denied by this Court on January 23, 1970.

^{6/}Tr. pp. 41, 42 (A-33)

^{7/}Order No. 973, p. 3 (A-25)

ARGUMENT

I

REVOCATION OF GADD'S CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY WAS REASONABLE AND PROPER

There can be no doubt that the record supports the Commission's factual findings that Gadd willfully and deliberately violated the Compact, and his certified promise to cease and desist such actions as incorporated into Order No. 782. In a hearing on Docket No. 193, Gadd stated on cross-examination as follows (Tr. pp. 41-42 (A-36-37)):

Q [By Mr. Kahn] Is it true that regardless of the provisions of the certificate issued by this Commission, you are going --

A [Mr. Gadd] I have violated them.

Q You violate them and you knowingly violate them?

A Yes, sir, I have, sir.

Q And you are telling the Chairman of the Commission that under oath, isn't that true?

A That's correct sir.

Q Even though you appeared one month ago and asked this Commission to defer any ruling --

A That's correct, sir.

Q Isn't it true that during the last thirty days, that period was probably the best sightseeing time in the District of Columbia?

A Right.

Mr. KAHN: I have no further questions, Mr. Chairman.

CHAIRMAN AVERY: Just so I can understand, Mr. Gadd, You say right out that since March 7, 1969 -- that was the date we put out this order following the hearing we had when you asked for some additional time, and we put another order out on March 7. Since then you have, you say, picked up people in the District of Columbia for sightseeing tours. Is that correct?

THE WITNESS: Yes, sir, you see, I --

Nor does Gadd presently claim that the Commission erred in any particular way in Docket 193. His argument is simply that he should be entitled to do anything he wants to do in order to earn a living^{8/} This argument must not prevail. The right of the legislature to regulate public utilities is firmly established. The Compact sets standards for such regulation of common carriers through issuance of certificates of public convenience and necessity, and Gadd as any utility operator, must comply with that law, and such reasonable administrative actions as are taken pursuant to it.

The Washington Metropolitan Area Transit Commission has issued seventeen certificates of public convenience and necessity and every one of those certificates contains

^{8/} Gadd brief of February 19, 1971, p. 1

limitations either as to the geographic area to be served, the types of service to be rendered, the equipment to be used, or a combination of more than one of these factors. Such limitations are necessary, among other reasons, to preserve from destructive competition^{9/} a full range of services for the entire community.

Gadd was issued his certificate on the basis of his showing that the public convenience and necessity warranted it. He frequently refers to his long-standing position in the industry, and alleges a history of unfair treatment, but a denial of an application by the Interstate Commerce Commission in 1951^{10/} is neither germane nor exculpatory, and this court has previously upheld the denial of his application for grandfather rights Gadd v. Washington Metropolitan Area Transit Commission 347 F2d 791.

^{9/} This is so because a certificate is a saleable commodity. In 1967, one small sightseeing operator, Archie B. Davis d/b/a White Way Sightseeing Tours, transferred its certificate to Washington Sightseeing Tours, a subsidiary of the Greyhound Corporation, which immediately increased both its operations and market share. That certificate contained no authority to pick up passengers in the area or Virginia served by Gadd.

^{10/} Gadd brief of November 30, 1970, pp. 2, 13; Gadd brief of February 19, 1971, p. 2

Gadd has stated that he did not appeal the limited amount of authority in Certificate No. 16 granted by Order No. 596, because "I had to give it a chance. I didn't know whether I could make a livelihood with it or not, so I had to give it a try ..."^{11/} But his actions belie this statement. The certificate was effective in April 1966, complaints were received in 1967, a show cause order was issued in January 1968. As a result of staff investigation of those complaints, Gadd admitted guilt and promised to cease and desist in February 1968, admitted he operated illegally in spring 1968,^{12/} and finally in July 1968 sought to amend his certificate to gain additional authority (Docket No. 181).

In the hearing on his application, Gadd emphasized his continuing policy of total contempt for Commission authority. He stated on the stand that he had knowingly conducted unauthorized operations since the date his certificate was first issued.^{13/} He further testified that he would continue his existing mode of operation regardless

^{11/} Tr. p. 39 (A-32)

^{12/} Gadd exhibit 1 in Docket No. 181 (A-40), and Tr. pp. 30, 31 (A-35)
^{13/} Docket No. 181, Tr. pp. 41, 42; 59, 60; 63, 64. See also corroboration of applicant's (Gadd) witness LaMore Tr. p. 25. (A-34, A-36 - A-39)

of the Commission's decision on his application.^{14/} And he in fact adhered to his practice of operating how and where he pleased. He did not appeal when his application was denied, blithely continuing his illegal operations instead. Even after the present proceeding was undertaken, he refused every opportunity to comply with the law.

At the first session of Docket No. 193 hearings, on February 28, 1969, Gadd's attorney argued that a specific new cease and desist order was necessary before willful violations could be established. Because of the seriousness of the penalties facing Gadd, the Commission, without adopting his attorney's theory, nevertheless issued Order No. 933 on March 7, 1969, ordering Gadd to comply with his certificate's limitations. When the hearing reconvened on April 21, 1969, Gadd testified that he was still continuing his admittedly illegal operations. (infra p. 7)

The controlling facts of this appeal closely follow those of Federal Communications Commission v. WOKO, Inc. 329 U.S. 223 (1946) in which the Supreme Court upheld the denial of a license renewal, approving the Commission

^{14/} Docket No. 181, Tr. p. 60 (A-38)

position "that it cannot be required to exercise the discretion vested in it to entrust the responsibilities of a licensee to an applicant guilty of a systematic course of deception" 329 U.S. 229^{15/} Gadd clearly and repeatedly demonstrated that he did not believe any Commission order to be entitled to observation, and the Commission could not rationally conclude that he would ever obey any lawful regulations on any subject in the future. The revocation of Certificate No. 16 was not only justified, but necessary, if the Commission was to carry out its public mandate to regulate Metropolitan District common carriers.

^{15/} see also Consolidated Carriers Corp. v. United States __ F. Supp __, (D.C. SDNY) decided December 14, 1970, 1971 Federal Carrier Cases 55,131

II

THE AUTHORITY CONTAINED IN GADD'S CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY WAS NOT UNREASONABLE OR UNJUSTLY RESTRICTIVE

Gadd argues that Certificate No. 16 was unreasonable and unjustly restrictive, thereby causing him to operate outside its limitations.^{16/} That argument should not be entertained now, for even if Certificate No. 16 was unduly restrictive that cannot serve to excuse Gadd's illegal actions. He did not appeal the scope of his certificate as granted, and did not seek to offer any proof that such authority was too limited until after he had established a 2 1/2 year record of unauthorized operations. Further the facts clearly show that Gadd never tried to operate within the limits of his authority^{17/} and therefore must be precluded from arguing that it was economically infeasible.

In any case, Gadd had been awarded proper authority. The Commission's determination that Gadd was not entitled to any operating rights based on service performed prior to the effective date of the Compact was affirmed in Gadd v. Washington Metropolitan Area Transit Commission 347 F2d 791. That opinion went on to hold that Gadd had proven that there existed a "substantial need"

^{16/} Gadd brief of February 19, 1971, p. 2

^{17/} Docket No. 181, Tr. p. 42 (A-37):

Q [Mr. Major] So you have knowingly conducted the operations from the District of Columbia since the date this certificate was issued without certificated authority from this Commission, isn't that right, sir?

A [Mr. Gadd] Correct, sir.

for the "distinctive character" of service he provided.

347 F2d 793. On remand, the Commission incorporated full authority for that distinctive service into Certificate No. 16.

Gadd complains of being restricted to 17-passenger vehicles. Gadd's service was in fact most distinguishable from that of other area carriers by the size of his vehicles. He offered tours in nothing larger than a 17-passenger vehicle, which some patrons prefer as offering a smaller, more private group.^{18/}

At the time the Commission first ruled on Gadd's Application for a Certificate of Public Convenience and Necessity five carriers had already been certificated to provide sightseeing services in the areas of Virginia he served.^{19/} As this Court pointed out, Gadd's service "contrasts sharply with the services offered by the protestants, who generally are either (a) the certificated

^{18/} Testimony of Gadd's witnesses in support of his original application for authority, Docket No. 49, Tr. 187, 235, 302 (A-41 - A-43)

^{19/} White House Sightseeing, Washington, Virginia, & Maryland Coach Company, Raymond Warrenner t/a Blue Line Sightseeing Company, Alexandria, Barcroft & Washington Transit Company, and The Grey Line, Inc.

public carriers in the area who use their larger vehicles in charter operations for special groups or (b) the larger sight-seeing companies who also employ larger buses and who do not pick-up and deliver at as many individual points." [emphasis added] Gadd v. Washington Metropolitan Area Transit Commission 347 F2d 791, 793.

Gadd did not show a need for larger vehicles--just the opposite. His smaller vehicles were an integral part of his position in the industry, and incorporating this distinction into his certificate was reasonable and proper.

Order No. 596 authorized Certificate No. 16, effective April 22, 1966. Gadd did not complain about the vehicle size limitation in that award of authority until more than two years later. When Gadd finally sought to amend his certificate, he offered no evidence other than his own assertion that he had lost some of his motel accounts to operators with larger vehicles. But by this time he had shown such total disregard for the existing system of area regulation, that the Commission could not properly award him additional authority (infra p. 12).

Secondly, Gadd alleges the area restrictions in his certificate were unjust, particularly the exclusion of pick-up rights within the District of Columbia. But here

again, his application on which Certificate No. 16 was awarded, was not supported by evidence sufficient to prove that a need for his service existed in the District of Columbia. All of his public witnesses spoke only to the needs of Alexandria or Arlington, Virginia, and his Exhibit No. 5, titled Passengers Handled - Ira F. Gadd d/b/a Columbia Sightseeing Company, showed well over 98% of his business was conducted from those two Virginia jurisdictions.^{20/}

In the case of the District of Columbia, there were already eight carriers certificated to offer sightseeing services there when Gadd's application was first ruled upon.^{21/} Again Gadd did not attempt to show changed

^{20/} The reference to Gadd's 1,473 patrons in Gadd v. Washington Metropolitan Area Transit Commission 347 F2d 793 appears to have been based on Gadd Exhibit No. 5. A copy of that exhibit is included as Appendix pp. 44, 45. A mark has been placed beside those passengers whose origin was not definitely in Alexandria or Arlington, Virginia, a total of 22.

^{21/} White House Sightseeing, Diamond Sightseeing Tours, Archie B. Davis d/b/a White-Way Sightseeing Tours, D. C. Transit System, Inc., WMA Transit Company, Raymond Warrenner t/a Blue Line Sightseeing Co., Alexandria, Barcroft, & Washington Transit Company (restricted against daily scheduled operations,) and The Grey Line, Inc.

circumstances until after he had built a record for defiance of Commission authority which could not be ignored. The geographic limitation in Certificate No. 16 was clearly based on the record before the Commission, and was in no way unjust or unreasonable.

CONCLUSION

For the foregoing reasons Commission Orders Nos. 973 and 982 should be affirmed, and this appeal dismissed.

Respectfully submitted,

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Dated: March 23, 1971

APPENDIX FOR RESPONDENT

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UNITED STATES COURT OF APPEALS
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IRA F. GADD,

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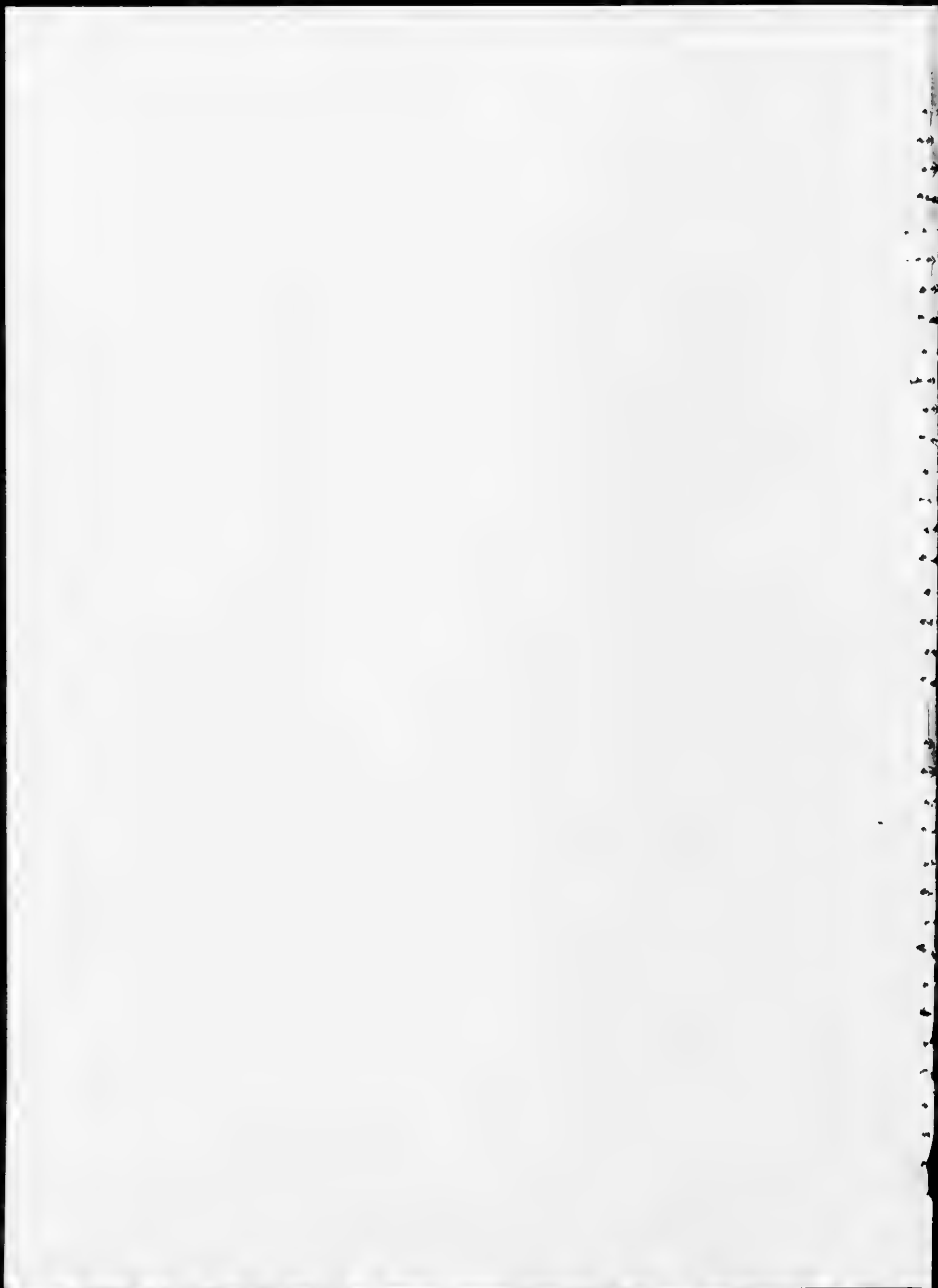
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION,

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APPENDIX FOR RESPONDENT



APPENDIX

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BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
WASHINGTON, D. C.
ORDER NO. 397

IN THE MATTER OF:

Application of Ira F. Gadd,)
d/b/a Columbia Sightseeing)
Company, for a Certificate)
of Public Convenience and)
Necessity (Grandfather).)

Decided September 4, 1964
Served October 8, 1964
Application No. 56

Application of Ira F. Gadd,)
d/b/a Columbia Sightseeing)
Company, for a Certificate)
of Public Convenience and)
Necessity.)

Application No. 256

Docket No. 49

By the Commission:

SKLAR, Chairman, and HOOKER, Commissioner; DUKE, Commissioner, concurs in that part of the Order relating to the "grandfather" application (No. 56); dissents as to that part relating to the "public convenience" application (No. 256).

APPEARANCES:

EUGENE T. LIIPFERT, Attorney for applicant.

MANUEL J. DAVIS, Attorney for W. V. & M. Coach Company, protestant.

S. HARRISON KAHN, Attorney for the Gray Line, Inc., Diamond Tours, Inc., and A. B. & W. Transit Company, protestants.

HAROLD SMITH, Attorney for D. C. Transit System, Inc., protestant.

GREEN B. BOHON, d/b/a History Tours, pro se, intervenor.

Pursuant to Section 4(a), Article XII, of the Washington Metropolitan Area Transit Regulation Compact ("Compact"), Ira F. Gadd, d/b/a Columbia Sightseeing Company ("Gadd" or "applicant"), seasonably filed an application for a "grandfather" certificate to authorize the transportation allegedly engaged in on March 22, 1961, the effective date of the Compact. The application seeks authority to transport sightseeing passengers for hire in special and charter operations between points and places within the Metropolitan District. The application was protested. Subsequently, the parties met for informal conferences in an attempt to resolve the issues. Upon failure of the parties to agree, the Commission ordered the matter to formal hearing.

Subsequently, the applicant filed an application for a certificate of public convenience and necessity, which basically duplicates the authority sought in the grandfather application. Protests were also tendered to this application as hereinbefore shown. Gadd also requested a consolidated record, which was granted.

Public notice of the two applications was provided.

The hearing was presided over by an examiner.

Two days of hearings were held and the transcript of the record comprised 472 pages. Seven exhibits were proffered by the applicant and received into evidence. Protestants Gray Line and D. C. Transit System, Inc., ("Transit") submitted one exhibit each. The applicant and four other witnesses testified in behalf of the applications, while nine witnesses testified in opposition thereto.

At the conclusion of the hearing, the applicant orally moved that the presiding officer issue a proposed report and that the Commission waive that portion of its Rule 25-02 which requires such a motion to be in writing. All parties waived any objection to the motion. The final procedural matter arose after the hearing when the Gray Line, Diamond Tours, and A.B. & W. Transit Company filed a petition for separation of these two applications for decisional purposes. The Commission granted the motion for a proposed report and denied the petition for separation, by Order No. 338, issued January 16, 1964.

The examiner's proposed report was served on February 18, 1964. The examiner recommended that:

1. The "grandfather" application be denied.
2. The application for a certificate of public convenience and necessity be denied insofar as it related to charter operations.

3. The applicant be granted a certificate of public convenience and necessity authorizing special operations between points within the District of Columbia, and further between the District of Columbia and certain points in northern Virginia.

The protestants filed exceptions to the proposed report, and the applicant replied.

The Commission ordered oral arguments of counsel for the parties, which arguments were held before the full Commission on May 22, 1964.

Thus, upon the evidence adduced at hearings, the examiner's proposed report, and the exceptions thereto and reply, and the oral argument, the two applications are before the Commission for its decision. For purpose of clarity, we will discuss them seriatim, beginning with the "grandfather" application.

GRANDFATHER APPLICATION

The applicant has been in the sightseeing industry in the Metropolitan District for nearly twenty years, initially in an individual capacity, operating limousines. In 1951, he filed an application for bus authority with the Interstate Commerce Commission, which was denied. Then, in 1953, he sold his operation to the Gray Line and joined that organization as an employee. In 1957, Gadd left that employment and returned to an individual operation. The record shows that he operated two seven-passenger limousines on and before March 22, 1961, doing business as Columbia Tours. He operated his sightseeing business from an office in his home in Arlington, Virginia. This transportation in the pre-Compact days was exempt from the Interstate Commerce Act (Section 203(b)(2)) certificate requirements.

In July and October of 1960, Gadd received several certificates of public convenience and necessity from the State Corporation Commission of the Commonwealth of Virginia authorizing him to furnish sightseeing service in northern Virginia. These certificates, while unrestricted insofar as the size of the vehicle used to furnish the transportation, authorized sightseeing operations from named locations to specified points, over designated routes, and return.

On March 8, 1961, Gadd purchased a Chevrolet Greenbrier. After acquiring this vehicle, Gadd took it to a body works company to have the vehicle converted into a sightseeing vehicle, designed to accommodate eleven (11) passengers and the driver. On March 22, 1961, the Compact became effective. At that point in time, it is uncontroversial that Gadd operated only two vehicles designed to carry

seven (7) passengers or less. The "reconstructed" vehicle had not been placed into operation.

A sole issue must be decided in a "grandfather" proceeding: What transportation subject to the Act was the applicant bona fide engaged in on the effective date of the Act (March 22, 1961)?

Gadd's operation parallels exactly the operations of more than 100 other individuals here in the Metropolitan District and which have previously been classified as being bona fide taxicab operations by both the Interstate Commerce Commission¹ and this Commission².

One of the primary purposes in creating this Commission was to transfer the regulation of the transportation of persons for hire in motor vehicles in the Washington Metropolitan Area from several agencies into one agency. It was the obvious intent of the legislatures to establish an orderly procedure whereby those lawfully so engaged could continue their work -- and thus the use of the "grandfather" clause of Section 4(a). The United States Court of Appeals for the District of Columbia Circuit, when requiring this Commission to issue a certificate to one entitled to "grandfather" rights, said the authority should embrace that transportation "legally and in good faith" engaged in³. Therefore, we find that a "bona fide" operation must have been a lawful one, at least insofar as prior laws required operating authority in the form of certificates and permits, or insofar as the operations were lawfully exempt from such requirements.

In Gadd's case, his interstate operations were lawful only as a taxicab operation under the exemption provision of Section 203(b)(2) of the Interstate Commerce Act, Part II. Practically all of Gadd's operations were interstate in nature.

His intrastate operations in Virginia, when not pursuant to the restricted certificates, were lawful only when rendering taxicab service. The District of Columbia did not require any operating authority. Gadd's operations in Maryland were rare and sporadic.

1. Motor Carrier Operations between Washington, D. C. and Mount Vernon, Virginia, 51 MCC 197.

2. Orders Nos. 165 and 174.

3. Montgomery Charter Service, Inc., v. Washington Metropolitan Area Transit Commission, 325 F. 2d 230 (1963).

We are of the opinion that, as of March 22, 1961, the applicant was bona fide engaged solely in a taxicab operation as defined in Section 2(d)⁴ of the Compact and that such operations are not entitled to a certificate of public convenience and necessity under Section 4(a) "grandfather" provisions of the Compact. The Commission's jurisdiction over Gadd's operations as of March 22, 1961, extended only to rates and insurance of taxicab operations between the signatories. Thus, Gadd is, as he was, restricted to taxicab operations in vehicles having a designed seating capacity of eight passengers or less, excluding the driver.

"PUBLIC CONVENIENCE" APPLICATION

As hereinbefore noted, Gadd filed an application for a certificate of public convenience and necessity subsequent to the filing of his "grandfather" application, seeking authority identical to that sought in the "grandfather" application.

Generally, the testimony of applicant in support of its application for a certificate of public convenience and necessity related almost entirely to his prior operations (i.e., prior to the date of the hearing in this matter). The protestants contended that the bus operations instituted by Gadd subsequent to March 22, 1961, were unlawful and, therefore, such testimony should not have been admitted and considered.

The significant factor is not the admissibility of the evidence, but the weight given to it. The Commission is of the opinion that any evidence not tainted with fraud or privilege that has a bearing on the ultimate question of public convenience and necessity should be admissible for our consideration. We cannot determine its materiality until we receive and weigh it.

A brief summary of the prior operations is in order. The record shows that in the middle of May, 1961, conversion on the Greenbrier vehicle, previously discussed herein, was completed, and the vehicle was put into operation. The record further shows that the vehicle was licensed in Virginia during the month of May, 1961, and in the District of Columbia on June 2, 1961. Thereafter, Gadd purchased another Greenbrier, and, at the time of the hearing, owned two seventeen-passenger Mercedes buses which were purchased in March, 1963.

The evidence relating to prior operations reveals that applicant did very little bus business until 1963. In an eight-

4. The subsequent amendment of Section 1(c) thus has no effect on these findings.

month period, from January to August, 1963, applicant transported a total of 1,473 passengers, although it is not clear how many of these passengers were transported by bus and how many were transported by taxicab.

In addition to this testimony, four witnesses testified in support of the application. They were all operators or managers of motels in Arlington County or the City of Alexandria, Virginia. Generally, they contended that there was a need for the service sought in the application and that the existing service was inadequate. Much of their testimony was based upon opinions formed from talks with their motel patrons.

Nine witnesses testified in opposition to this application, four of whom were taxicab operators who engage extensively in sightseeing operations, and five representatives of the protesting carriers. The carriers were either devoted exclusively to sightseeing operations or regular-route carriers incidentally engaged in charter and sightseeing operations. The latter's testimony discussed the extent of their authority, the number of vehicles available for and devoted to the sightseeing business, the large financial investment in those vehicles, the extensive efforts they make to serve those seeking charter and sightseeing transportation, and, in the case of the regular route carriers, the importance of the revenues from these incidental services to their overall financial requirements and the effect any diversion would have upon their regular transit operations; they also testified that they have never declined a request for service and have received no complaints regarding the service they have rendered.

While it is undisputed that Gadd did, in fact, transport by bus a number of sightseeing passengers prior to the date of the hearing in this matter, there is little, if any, evidence to show that this service could not have been adequately provided by other authorized carriers. The mere existence of Gadd's bus operation would undoubtedly have resulted in patronage even though an overabundance of service was otherwise available. Therefore, we attach little weight to the fact that he actually transported some passengers. The number of passengers carried is too insignificant to warrant the conclusion that the service of protestants is inadequate. On the other hand, the evidence is more than substantial that adequate service is available and rendered. We are of the opinion and find that the service of the protesting carriers is and will be adequate to meet the present and future public convenience and necessity. We further find that the present and future public convenience and necessity does not require the proposed service of the applicant.

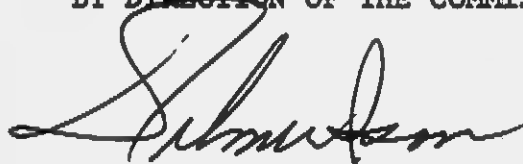
As we have found that the public convenience and necessity does not require the proposed service, it is not necessary that we consider applicant's fitness and financial ability.

THEREFORE, IT IS ORDERED THAT:

1. The "grandfather" application (No. 56) of Ira F. Gadd, d/b/a Columbia Sightseeing Company, be, and it is hereby, denied.

2. The application (No. 256) of Ira F. Gadd, d/b/a Columbia Sightseeing Company, for a certificate of public convenience and necessity be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:



DELMER ISON
Executive Director

DUKE, Commissioner, concurs with the decision to deny the "grandfather" application, dissents as to the decision to deny the "public convenience and necessity" application:

In my opinion, the evidence in this proceeding warrants a finding that the public convenience and necessity requires the proposed service. I would grant the authority sought in Application No. 256.

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 596

IN THE MATTER OF:

Served April 22, 1966

Application of Ira F. Gadd,)
d/b/a Columbia Sightseeing)
Company, for a Certificate)
of Public Convenience and)
Necessity.)

Application No. 256

Docket No. 49

A. B. & W. Transit Company, Diamond Tours, and The Gray Lines, Inc., have filed a joint application for reconsideration of Order No. 571, issued February 25, 1966.

Applicants for reconsideration claim that the Commission should have limited the authority granted in said Order to transportation originating only in the City of Alexandria and the County of Arlington, Virginia, and restricted the size of the equipment in which the transportation could be rendered to vehicles having a seating capacity of seventeen (17) passengers or less.

Order No. 571 was issued following the remand of Order No. 397 by the United States Court of Appeals for the District of Columbia Circuit, for further proceedings not inconsistent with its decision.

The Commission is of the opinion that reconsideration should be granted, restricted to the existing record.

In its opinion the Court stated that "the facts brought out at the hearing point inescapably to the distinctive character of petitioner's service and the substantial need for it." It then stated that "this service is obviously most convenient for certain kinds of visitors to the capital area, i.e., those who prefer to stay at outlying motels in Northern Virginia...."

While seemingly in agreement with the Examiner's Proposed Report, a re-examination of the Opinion reveals that the Court did in fact conclude that the record supported a more limited grant of authority than was recommended by the Examiner. While Gadd's evidence

indicated a need for the tour service to include the District of Columbia as a focal point of interest, along with points in Arlington and Fairfax Counties, particularly Mt. Vernon, Virginia, the distinctive service visualized by the Court precludes consideration of the District of Columbia as an origin area for that type of service. The interstate authority hereafter described will limit applicant's source of origin to the City of Alexandria and Arlington County, but necessarily will include the District of Columbia and the Virginia points as part of the continuous interstate tour service required by the evidence. The Virginia points are to be served only as a part of the entire interstate tours, and are not therefore, duplicative of, or an extension of, any intrastate Virginia transportation, which transportation remains under the jurisdiction of the Virginia State Corporation Commission, and from which Gadd has received certain authority.

It also requires the imposition of a restriction on the size of the vehicles in which the service should be operated. In distinguishing the proposed service from that operated by the protestants, the Court twice referred to the fact that the protestants' vehicles were large buses and that applicant operated "17-passenger limousines".

The Commission is of the opinion and finds that Order No. 571 should be modified accordingly, and the authority granted therein be amended as hereinafter provided.

THEREFORE, IT IS ORDERED:

1. That the application of A. B. & W. Transit Company, Diamond Tours, and The Gray Line, Inc., for reconsideration of Order No. 571 be, and it is hereby, granted.

2. That Order No. 571 be, and it is hereby, amended to incorporate the findings stated above.

3. That a certificate of public convenience and necessity be issued Ira F. Gadd, d/b/a Columbia Sightseeing Company, authorizing the transportation of passengers for hire as follows:

IRREGULAR ROUTES:

Passengers and their baggage:

SPECIAL OPERATIONS:

Round-trip, or one-way sightseeing tours;

From points in the City of Alexandria and Arlington County, Virginia, to points in the District of Columbia, and points in the City of Alexandria, Arlington and Fairfax Counties, Virginia via the District of Columbia.

Restricted: to the performance of such transportation in vehicles having a seating capacity of not more than seventeen (17) passengers.

BY DIRECTION OF THE COMMISSION:

A handwritten signature in cursive script, appearing to read "Delmer Ison", written in dark ink.

DELMER ISON
Executive Director

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 768

IN THE MATTER OF:

Served January 10, 1968

Order to Show Cause Directed)
Against Ira F. Gadd, d/b/a) Docket No. 164
Columbia Sightseeing Company.)

Ira F. Gadd, d/b/a Columbia Sightseeing Company, has been issued Certificate of Public Convenience and Necessity No. 16. The certificate authorizes him to engage in irregular route special operations, round-trip or one-way sightseeing tours from points in the City of Alexandria and Arlington County, Virginia, to points in the District of Columbia and certain areas in Virginia, via the District of Columbia.

Commission Regulation 65-03 requires the submission of an annual statistical report on or before the subsequent 31st day of March.

Article XII, Section 5(a) of the Compact, and Commission Regulation 55-01 require the filing of a tariff for all fares to be charged; Section 5(d) and Regulation 55-08 prohibit the charging of any fare not specified in said tariff.

This matter arises upon the recommendation of the Staff, which alleges that:

a) Ira F. Gadd has been and probably will continue to originate passenger tours in the District of Columbia;

b) Ira F. Gadd has charged and received a fare not specified in and authorized by his said tariff;

c) Ira F. Gadd has not filed the statistical report for the calendar year 1966 as required by Regulation 65-03.

Upon all of which the Commission is of the opinion that this order should issue, making said Ira F. Gadd, d/b/a Columbia Sightseeing Company, respondent hereto and giving him the opportunity to appear, at the time and place herein-after described, and show cause why he should not be found to have wilfully and knowingly (1) engaged in transportation of persons for hire between points in the Metropolitan District without having been issued a certificate of public convenience and necessity to authorize such transportation, (2) charged and collected a fare not authorized by a tariff approved by this Commission, and (3) failed to file the statistical data for calendar year 1966 as required by Regulation 65-03, and to further show cause why Certificate of Public Convenience and Necessity No. 16 should not be revoked.

THEREFORE, IT IS ORDERED:

1. That Ira F. Gadd, d/b/a Columbia Sightseeing Company, be, and he is hereby, made a respondent to this proceeding.

2. That this matter be, and it is hereby, set for hearing on Tuesday, February 20, 1968, at 10:00 A.M., in the Hearing Room of the Commission, 1815 North Fort Myer Drive, Arlington, Virginia, for the purpose of giving respondent an opportunity to appeal and show cause why the Commission should not find that he wilfully and knowingly (1) engaged in transportation of persons for hire between points in the Metropolitan District without having been issued a certificate of public convenience and necessity to authorize such transportation, (2) charged and collected a fare not authorized by a tariff approved by this Commission, and (3) failed to file the statistical data for calendar year 1966 as required by Regulation 65-03, and to further show cause why the Commission should not revoke and set aside Certificate of Public Convenience and Necessity No. 16.

3. That twenty-five dollars (\$25.00) is a reasonable sum to cover the expense of this proceeding; accordingly, respondent is hereby directed to deposit such amount in the name and to the credit of the Washington Metropolitan Area

Transit Commission, Account No. 09459499, Old Dominion Bank, 1901 North Fort Myer Drive, Arlington, Virginia, on or before Friday, February 16, 1968, and deliver verification thereof to the Chief Clerk of the Commission on or before 10:00 A.M. Tuesday, February 20, 1968.

BY DIRECTION OF THE COMMISSION:

Melvin E. Lewis

MELVIN E. LEWIS
Executive Director

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 782

IN THE MATTER OF:

Served February 28, 1968

Order to Show Cause Directed)
Against Ira F. Gadd, d/b/a)
Columbia Sightseeing Company.)

Docket No. 164

It appearing, That by order served January 10, 1968, the Commission, on its own motion, entered Order No. 768, in the above-entitled proceeding directing respondent to show cause why the Commission should not find that he willfully and knowingly (1) engaged in transportation of persons for hire between points in the Metropolitan District without having been issued a certificate of public convenience and necessity to authorize such transportation, (2) charged and collected a fare not authorized by a tariff approved by this Commission, and (3) failed to file the statistical data for calendar year 1966, as required by Regulation 65-03, and to further show cause why the Commission should not revoke and set aside Certificate of Public Convenience and Necessity No. 16.

It further appearing, That, Ira F. Gadd, d/b/a Columbia Sightseeing Company, submitted an Offer of Settlement and Proposal of Adjustment so as to determine this controversy by consent without the necessity of a hearing and decision.

It further appearing, That respondent in its Offer of Settlement and Proposal of Adjustment admits that (1) on and after June 24, 1966, Ira F. Gadd, d/b/a Columbia Sightseeing Company, conducted special operations, round-trip and one-way sightseeing tours as a common carrier between points in the Metropolitan District without having been issued a certificate of public convenience and necessity to authorize such transportation, (2) Ira F. Gadd, d/b/a Columbia Sightseeing Company charged and collected a fare not authorized by a tariff approved by this Commission, and (3) Ira F. Gadd, d/b/a Columbia Sightseeing Company has not filed statistical data for the year 1966

as required by Regulation 65-03, and that respondent has made certain proposals in order to comply with the Commission's Regulations and the Washington Metropolitan Area Transit Regulation Compact;

It is ordered, That said "Offer of Settlement and Proposal of Adjustment" is approved and accepted by the Commission.

It is further ordered, That respondent, in accordance with the Offer of Settlement and Proposal of Adjustment, is hereby ordered to cease and desist from all operations in violation of the Compact, which are of the character found herein to be unlawful, unless or until appropriate authority is obtained from this Commission;

It is further ordered, That respondent comply with Rule 29 of the Rules of Practice and Procedure of the Commission and that respondent operate in accordance with his proposal of adjustment set forth in the "Offer of Settlement and Proposal of Adjustment."

And it is further ordered, That the statutory effective and compliance date after which said respondent will be in willful violation of this order shall be immediately from the date of service of this order.

BY DIRECTION OF THE COMMISSION:

Melvin E. Lewis

MELVIN E. LEWIS
Executive Director

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 890

IN THE MATTER OF:

Served December 9, 1968

Application of Ira F. Gadd,)
d/b/a Columbia Sightseeing)
Company to Amend Certificate)
of Public Convenience and)
Necessity.)

Application No. 511

Docket No. 181

APPEARANCES:

IRA F. GADD, applicant.

LINWOOD C. MAJOR, JR., Attorney for Washington Sightseeing Tours, Inc., Atwood Transport Lines, Inc., and Airport Transport, Inc., protestants.

MANUEL J. DAVIS, Attorney for D. C. Transit System, Inc., and W. V. & M. Coach Company, protestants.

S. HARRISON KAHN, Attorney for A. B. & W. Transit Company, the Gray Line, and White House Sightseeing Corporation, protestants.

DAVID S. GREENE, Attorney for WMA Transit Company, protestant.

By Application No. 511, filed July 26, 1968, Ira F. Gadd, d/b/a Columbia Sightseeing Company, seeks amendment of his Certificate of Public Convenience and Necessity No. 16 for authority

- (a) To engage in irregular route, round-trip or one-way sightseeing tours between all points in the Washington Metropolitan Area;
- (b) To engage in irregular route charter operations between all points in the Washington Metropolitan Area;

- (c) To remove from his certificate a restriction limiting the authorized operations to vehicles having a seating capacity of not more than seventeen (17) people.

On November 18, 1968, the Commission held a hearing on this matter. At the termination of the applicant's case, the protestants moved to suspend further hearing in this matter and to submit to the Commission the issue of applicant's fitness for an immediate determination. Pursuant to Rule 15-04 of the Commission Rules of Practice and Procedure, the examiner recessed the hearing and certified this question to the Commission for consideration.

Applicant presently holds authority to conduct special operations round-trip or one-way sightseeing tours from points in the City of Alexandria and Arlington County, Virginia, to points in the District of Columbia, and points in the City of Alexandria, Arlington and Fairfax Counties, Virginia, via the District of Columbia. This transportation is restricted to vehicles having a seating capacity of not more than seventeen (17) passengers.

Applicant operates two 1963 seventeen (17) passenger buses. Mr. Gadd presented evidence indicating that he regularly conducts sightseeing operations in Virginia and the District of Columbia. Generally, applicant starts his trips in Virginia and then proceeds into the District of Columbia, continually picking up passengers all the time, regardless of the geographical location. For a period of from June through October of 1968, he had originated trips with 434 passengers in Virginia and 564 passengers in the District of Columbia. Of the Virginia trips, the evidence of record indicated that some of them were likewise originated beyond the scope of applicant's certificate. Applicant openly admitted that he did not have the authority to operate trips which originated in the District of Columbia, that he was aware of this at the time he made the trips, and that he would continue to conduct such operations regardless of the outcome reached herein. In addition, the applicant admitted that there were instances in which he had conducted trips with more than seventeen (17) passengers in his vehicle.

The applicant presented one supporting witness. This witness testified that he regularly sells sightseeing tickets for the applicant for trips originating in the District of Columbia.

At this point, the Commission will take official notice of Docket No. 164, in which we issued a show cause order against the applicant for certain unauthorized operations -- similar, if not identical, to those complained of herein.

Subsequently, the applicant tendered an Offer of Settlement and Proposals of Adjustment. Therein the applicant agreed to cease and desist all operations beyond that authorized in his certificate. By Order No. 782, served February 28, 1968, we dismissed the show cause order, accepted applicant's settlement, and stated that any such subsequent operations would be in wilful violation of the Compact.

On the basis of the record before us, we have no choice but to find the applicant unfit. As indicated, applicant's operations have been under careful Commission scrutiny for some time. In Order No. 782, we declined to further pursue any remedial action against the applicant on receipt of a pledge from him to discontinue all illegal operations. And in that order we stated that any subsequent similar violation would constitute a wilful violation. By applicant's own admission and evidence, it is apparent that he disregarded the stated pledge and originated unauthorized trips in the District of Columbia (as well as a few in parts of Virginia) from June to October, 1968. Applicant stated that he did this with full knowledge of the illegality and that he would continue to do so. Under the circumstances, the unauthorized trips can in no sense be said to have been performed under a color of right; they are blatant violations of the law.

Under Section 4(b) of the Compact, the Commission must reach an affirmative finding of fitness as a prerequisite to a grant of authority. As indicated, this we cannot do. The evidence of record is clear, applicant's violations are patent, and we find him to be unfit.

In the normal case, no further hearings would be necessary, and the application would simply be denied. However, we cannot overlook the deliberate and wilful breach of Mr. Gadd's written pledge not to engage in transportation unauthorized by his certificate, and by his wilful and knowing violations of the cease and desist provisions of Order No. 782. The Commission is of the opinion that a revocation proceeding should be initiated immediately. We will, therefore, hereinafter deny the pending application, and, by separate order entered concurrent herewith, establish the revocation proceeding.

THEREFORE, IT IS ORDERED that the application of Ira F. Gadd, d/b/a Columbia Sightseeing Company for amendment of Certificate of Public Convenience and Necessity No. 16 be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:

Melvin E. Lewis

MELVIN E. LEWIS
Executive Director

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 891

IN THE MATTER OF:

Served December 9, 1968

Order of Suspension and to Show)
Cause Directed Against Ira F.)
Gadd, d/b/a Columbia Sightseeing)
Company.)

Docket No. 193

By Order No. 890, served this day, the Commission, in denying the application of Ira F. Gadd, d/b/a Columbia Sightseeing Company for an amendment of Certificate of Public Convenience and Necessity No. 16, found that the evidence of record indicated that the applicant has been engaged in certain operations in violation of the provisions of his certificate, Section 4(b) of the Compact, and the cease and desist provisions of Order No. 782. In said Order No. 890, the Commission found that because the violations were known, wilful, and deliberate, a revocation proceeding should be initiated.

The Commission is of the opinion that Ira F. Gadd be directed to appear and show cause why Certificate No. 16 should not be revoked.

THEREFORE, IT IS ORDERED that Ira F. Gadd be, and he is hereby, directed to appear at a hearing to be held on Monday, January 13, 1969, at 10:00 A.M., in the Hearing Room of the Commission, 1815 North Fort Myer Drive, Arlington, Virginia, and show cause why Certificate of Public Convenience and Necessity No. 16 should not be revoked.

BY DIRECTION OF THE COMMISSION:



MELVIN E. LEWIS
Executive Director

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 933

IN THE MATTER OF:

Served March 7, 1969

Order to Show Cause Directed)
Against Ira F. Gadd, d/b/a)
Columbia Sightseeing Company.)

Docket No. 193

On December 9, 1968, we served Order No. 901, which set for hearing a show cause proceeding against Ira F. Gadd, d/b/a Columbia Sightseeing Company. At the hearing held February 28, 1969, counsel for Mr. Gadd moved for a dismissal on the ground that we had failed to comply with Section 4(g), Article XII, of the Compact. As relevant, this section requires that revocation take place only following thirty (30) days or more of wilful non-compliance with a Commission order commanding obedience to Commission rules, regulations, orders, or certificates. At the hearing, we pointed out that this had been done and that the motion was inappropriate. Nevertheless, in view of the fact that the respondent had just recently retained counsel, and, in view of the seriousness of the possible penalties in this proceeding, we indicated that we would issue this order granting, at least, a thirty (30) day continuance and directing compliance with our rules and regulations.

THEREFORE, IT IS ORDERED:

1. That respondent be, and he is hereby, directed to cease and desist from all acts in violation of the Compact and from all operations not authorized by the terms of Certificate of Public Convenience and Necessity No. 16, and henceforth to comply with the rules and regulations of this Commission and with the terms and conditions of Certificate of Public Convenience and Necessity No. 16.

2. That this matter be, and it is hereby, set for hearing on April 21, 1969, in the Hearing Room of the Commission, 1815 North Fort Myer Drive, Arlington, Virginia, for the purpose of

giving the respondent an opportunity to appear and demonstrate compliance with the Compact, the rules and regulations of this Commission and Certificate of Public Convenience and Necessity No. 16, and to show cause why the Commission should not revoke his Certificate of Public Convenience and Necessity No. 16 for the reasons set out in Orders Nos. 768, 782, 890, and 891.

BY DIRECTION OF THE COMMISSION:

A handwritten signature in cursive script, reading "Melvin E. Lewis".

MELVIN E. LEWIS
Executive Director

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 973

IN THE MATTER OF:

Served September 11, 1969

Order of Suspension and to)
Show Cause Directed Against)
Ira F. Gadd, d/b/a Columbia)
Sightseeing Company.)

Docket No. 193

Ira F. Gadd, doing business as Columbia Sightseeing Company, was granted WMATC Certificate of Public Convenience and Necessity No. 16 with authority to operate:

IRREGULAR ROUTES:

Passengers and their baggage:

SPECIAL OPERATIONS:

Round-trip, or one-way sightseeing tours;

From points in the City of Alexandria and Arlington County, Virginia, to points in the District of Columbia, and points in the City of Alexandria, Arlington and Fairfax Counties, Virginia, via the District of Columbia.

RESTRICTED: to the performance of such transportation in vehicles having a seating capacity of not more than seventeen (17) passengers.

On recommendation of the Commission staff, Order No. 768 was issued January 10, 1968, directing Gadd to show cause why said Certificate should not be revoked on grounds of alleged violations of certificate limitations and Commission regulations. Specifically, the staff charged that Gadd was originating tours within the District of Columbia and that he had failed to file tariffs and reports as required by the Commission.

As a result of Order No. 768, Gadd offered, and the Commission in Order No. 782 accepted, a Settlement and Proposal of Adjustment, in which he admitted that he had conducted operations outside the scope of his certificate and promised to cease and desist all such unauthorized activity. It was understood that any continuation of these activities would constitute a willful failure to comply with an order of the Commission, and a provision to that effect was included in Order No. 782.

On July 26, 1968, Gadd applied to amend and expand Columbia Sightseeing Company's certificate to permit origination of tours in the entire Metropolitan District, and to remove all passenger restrictions. In the course of hearings on this application, Gadd testified that he had continued to solicit and pick up passengers without proper lawful authority, to wit, within the District of Columbia. In Order No. 890, the Commission denied his application on the grounds that applicant was not fit to be given such authority, as evidenced by his willful and deliberate violations of his written pledge and the Commission's Order No. 782.

The Commission also issued Order No. 891 directing Gadd to appear and show cause why his actions should not be ground for revocation of his certificate under Article XII, Section 4(g) of the Compact. On April 21, 1969, a hearing was convened in which Gadd testified that he had been and was continuing to act in knowing contravention of Commission orders, and that he intended to continue doing so in the future.

Respondent's sole defense was that he is unable to make a living under the terms of his existing certificate. We are not able to accept this as justification for Gadd's illegal acts.

First, it should be kept in mind that Gadd's certificate was issued pursuant to the "grandfather" provisions of the Compact, and only as a result of a directive by the Court of Appeals that such certification be issued [see Gadd v. WMATC, 347 F2d 791 (D.C. Cir. 1965)]. Therefore, the fact of his possession of a certificate carries no implication that the Commission has ever made a determination that Gadd could earn a reasonable return pursuant to that certificate.

Second, the issue of inability to make a reasonable living was properly raised by Gadd in his application for an enlarged certificate. When that application was denied in Order No. 890, no appeal was taken.

Third, even if the issue had not been settled in the prior proceeding, we do not consider that the economic factor alone would constitute justification for willful and deliberate violation of the Compact or of lawfully binding Commission orders. Therefore, inasmuch as no sufficient cause has been shown for these violations, we will revoke the Certificate of Public Convenience and Necessity of Ira B. Gadd, d/b/a Columbia Sightseeing Company.

Under the Compact, any person affected by an order of the Commission has 30 days in which to petition the Commission for reconsideration. We will make the revocation of this certificate effective 40 days after the issuance of this order, so that Gadd may continue to operate until he has had an opportunity to take advantage of all the administrative steps available to him and to give the Commission adequate time to respond to further petitions on Mr. Gadd's part, should he choose to make any.

THEREFORE, IT IS ORDERED that Certificate of Public Convenience and Necessity No. 16 issued to Ira F. Gadd, d/b/a Columbia Sightseeing Company be, and it is hereby, revoked, effective October 21, 1969.

BY DIRECTION OF THE COMMISSION:



MELVIN E. LEWIS
Executive Director

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 982

IN THE MATTER OF:

Served October 20, 1969

Order to Show Cause Directed)
Against Ira F. Gadd, d/b/a)
Columbia Sightseeing Company.)

Docket No. 193

On September 11, 1969, the Commission issued Order No. 973 revoking, effective October 21, 1969, WMATC Certificate of Public Convenience and Necessity No. 16 issued to Ira F. Gadd, d/b/a Columbia Sightseeing Company. The revocation was ordered after Gadd failed to show cause why his certificate should not be revoked due to his deliberate refusal to operate in accordance with the geographic restriction in his certificate. Timely application for reconsideration of our action in Order No. 973 was made and it is that application we are now addressing.

The crux of Mr. Gadd's certificate compliance difficulties has been his refusal to limit his sightseeing solicitation and pick-up of passengers to Virginia, as is required by Certificate No. 16. Instead, he has regularly solicited and originated patrons in the District of Columbia, usually in front of the White House.

The certification of Mr. Gadd to operate a sightseeing service and the question of his compliance with his certificate have been the subject of Commission action numerous times in the past. In August 1963, he filed an application for a certificate of public convenience and necessity which was denied in October 1964 in Order No. 397. That denial was appealed to the Court of Appeals for the District of Columbia Circuit which held that the Commission's conclusion that Mr. Gadd had no right to "grandfather" certification should stand, but the court further found that the record showed a "need"

for the service performed by Mr. Gadd, thus overruling the Commission's conclusion that the certificate should not be issued on the basis of public convenience and necessity. The matter was remanded to the Commission for action not inconsistent with the court's findings. In February 1966, in Order No. 571, the Commission issued Certificate No. 16 to Gadd, but upon reconsideration the certificate was amended to restrict pick-ups to Virginia only and to limit Gadd's operation to the use of 17-passenger vehicles or less.

Then, in January 1968, the Commission issued an order for Gadd to show cause why the Commission should not revoke and set aside Gadd's WMATC Certificate No. 16 for operating in violation of his certificate by originating passengers in the District of Columbia, for charging a fare not on file with the Commission and for failure to file required statistical data. In February 1968, the Commission accepted Gadd's Offer of Settlement in which he admitted the charges set forth in the show cause order and agreed further breaches would be regarded as wilful. (Order No. 782)

In July 1968, Gadd filed an application to expand his certificate in order to allow irregular route or charter operations anywhere in the Metropolitan District and to remove the vehicle size limitations. In December 1968, having found that Gadd had continued to operate in violation of his certificate and in violation of his Offer of Settlement which the Commission had accepted in disposing of the show cause order, the Commission rejected his application for the expanded certificate, on fitness grounds.

Simultaneously, the Commission issued Order No. 891 requiring Gadd to show cause why, because of the continued wilful violation of the terms of his certificate, his certificate should not be revoked. At the request of Mr. Gadd, the hearing was postponed three times until April 1969. At the hearing, Gadd admitted that he was continuing to operate from the District of Columbia in violation of his certificate and asserted that he was unable to produce sufficient income operating only from Virginia in compliance with his certificate. He submitted passenger, revenue and expense tabulations for the year 1968. In September 1969, the Commission, finding that Gadd had not shown sufficient cause as to why his certificate should not be revoked, issued Order No. 973 revoking it.

Mr. Gadd gives the following reasons to support his request for reconsideration of this latest order:

The limitations in his certificate are violative, he asserts, of the United States Constitution and the Constitution of the Commonwealth of Virginia. The basic theme of his contention is that the limitations in the certificate are such that he is deprived of his right to make a living, a result this Commission cannot lawfully impose.

In addition, he argues that the Commission in issuing Certificate No. 16 in February 1966 in Order No. 571 did not act in conformance with the directive of the Court of Appeals in Gadd v. WMATC, 347 F2d 791 (D.C. Cir. 1965) wherein the Commission denial to Mr. Gadd of a certificate of public convenience and necessity was remanded to the Commission. The court there ordered an "unrestricted" certificate, according to Mr. Gadd, not the one he received containing geographic and vehicle-size restrictions.

We do not concur in Gadd's assertion that limitations placed in the certificate of public convenience and necessity issued to him violate the Constitutions of the United States and the Commonwealth of Virginia. The employment of the certifying device as a means of delineating the activities in accordance with the public convenience and necessity of those providing transportation services to the public has been held compatible with constitutionally guaranteed individual rights. The practice of including restrictions and limitations in those certificates has likewise been upheld in the face of challenge on constitutional grounds.

With respect to the question of the proof submitted by Mr. Gadd with regard to his inability to earn a living, restricted as he is by the terms of his certificate, on review of the record we are still unable to conclude that the showing made constitutes adequate grounds for declaring limitations on his certificate to be inherently unconstitutional. The exhibits attached to Gadd's answer to our order to show cause (Order No. 782) are tabulations showing the number of passengers transported in 1968 from places in Virginia compared to the number of passengers transported from places in the District of Columbia. They further show that

total receipts for 1968 exceeded expenses resulting in a net profit of \$1,113.56. These tabulations do not show what results Mr. Gadd might have had financially if he had diligently concentrated his efforts in originating passengers in Virginia in accordance with his certificate. As such, they cannot be considered as proof that the restricted certificate is uneconomical.

As to the contention that the Commission failed to comply with the Court of Appeals directive in Gadd against WMATC, supra, in issuing WMATC Certificate No. 16, we have reviewed that opinion and do not agree that it required the issuance of an "unrestricted" certificate to Gadd. The opinion, on the contrary, heavily stresses the court's conclusion that the need was apparent for Virginia service with small vehicles such as was being provided by Gadd. We believe that Mr. Gadd has misread the Court of Appeals opinion.

In reviewing this matter, we come back, as we have in the past, to the basic question of Mr. Gadd's wilful violation of the limitations in his certificate. No amount of argument to the effect that Mr. Gadd's operation is economically infeasible will erase the fact that Mr. Gadd has in response to earlier Commission directives agreed to cease and desist from the violations he was charged with, and agreed those violations, if occurring in the future would be regarded as wilful. Instead of attempting to operate in accordance with his certificate and his promises to the Commission until any constitutional or other legal claims he might have wished to assert could be resolved in the judicial process which has been established for the orderly resolution of such claims, he has chosen to continue his pattern of certificate violation leaving us with no alternative to revocation of his certificate.

THEREFORE, IT IS ORDERED that the application of Ira F. Gadd, d/b/a Columbia Sightseeing Company, for reconsideration of Order No. 973 be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:



MELVIN E. LEWIS
Executive Director

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 991

IN THE MATTER OF:

Served November 17, 1969

Order to Show Cause Directed)
Against Ira F. Gadd, d/b/a)
Columbia Sightseeing Company.)

Docket No. 193

We issued Order No. 891 on December 9, 1968, directing Ira F. Gadd, d/b/a Columbia Sightseeing Company, to show cause why his Certificate of Public Convenience and Necessity No. 16 should not be revoked. After hearing, we issued Order No. 973, dated September 11, 1969, revoking that certificate. In Order No. 982, issued October 20, 1969, we denied Gadd's application for reconsideration of the revocation. By motion filed October 23, 1969, Gadd requested the Commission to stay Orders No. 973 and No. 982 pending review of the matter by the United States Court of Appeals for the District of Columbia.

Rule 18 of the Federal Rules of Appellate Procedure states in part: "Application for a stay of a decision or order of an agency pending direct review in the court of appeals shall ordinarily be made in the first instance to the agency." Agencies of the federal government whose orders are reviewable in the federal courts are specifically authorized by statute to postpone the effective date of their orders, pending judicial review. Title 5 USC §705. However, the Commission is an agency of the three signatories to the Washington Metropolitan Area Transit Regulation Compact -- Maryland, Virginia and the District of Columbia -- and its authority must be found within the provisions of that Compact.

Title II, Article XII, Section 15 of the Compact, entitled Administration Powers of the Commission; Rules, Regulations and Orders, says: "The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this Act." The power conferred in that statement is the power usually given to an administrative agency as a necessary means of carrying out its regulatory functions. We do not read it as including the special kind of authority given to federal agencies in the federal statute cited. That statute allows a federal agency to stay its action pending court review when it finds that "justice so requires."

Nor do we find that the Commission has any inherent authority to stay its orders pending judicial review. Power to issue a stay is a power grounded in equity, said to be an inherent power in courts to preserve rights until the claim to those rights can be reviewed and determined by the court. Administrative agencies are not repositories of the same inherent powers as are found in the judiciary.

Therefore, we conclude that the Commission is not empowered to stay one of its orders pending its review in the courts.

THEREFORE, IT IS ORDERED that the Motion of Ira F. Gadd, d/b/a Columbia Sightseeing Company, to Stay Orders Nos. 973 and 982 be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:



MELVIN E. LEWIS
Executive Director

5 Q And after the Commission issued its Certificate
6 No. 16, you didn't appeal that decision, did you?

7 A I had to give it a chance. I didn't know whether I
8 could make a livelihood with that or not, so I had to give
9 it a try, so it was more or less on a trial to me, to establish
10 whether I could make a livelihood or make a living with this
11 seventeen passengers. I didn't know.

12 Q Have you made an application to this Commission,
13 after you have had this chance, for additional authority?

14 A Yes, sir, I have.

15 Q And it was denied, wasn't it?

16 A Yes, sir.

17 Q You didn't bring anybody to the hearing, as I recall,
18 to say that there was any need for your service. Isn't that
19 true?

20 A Well, I have proven to this Commission and the Inter-
21 state Commerce Commission that I had a need for my service
22 years ago. And I didn't get any results -- favorable results
23 from bringing those witnesses.

8 BY MR. KAHN:

9 Q Is it true that regardless of the provisions of
10 the certificate issued by this Commission, you are going --

11 A I have violated them.

12 Q You violate them and you knowingly violate them?

13 A Yes, sir, I have, sir.

14 Q And you are telling the Chairman of the Commission that
15 under oath, isn't that true? .

16 A That's correct, sir.

17 Q Even though you appeared one month ago and asked
18 this Commission to defer any ruling --

19 A That's correct, sir.

20 Q Isn't it true that during the last thirty days, that
21 period was probably the best sightseeing time in the District
22 of Columbia?

23 A Right.

24 MR. KAHN: I have no further questions, Mr. Chairman.

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15 1 CHAIRMAN AVERY: Just so I can understand, Mr. Gadd.
2 You say right out that since March 7, 1969 -- that was the
3 date we put out this order following the hearing we had when
4 you asked for some additional time, and we put another order
5 out on March 7. Since then you have, you say, picked up
6 people in the District of Columbia for sightseeing tours. Is
7 that correct?

8 THE WITNESS: Yes, sir, you see, I --

9 Q He hasn't stopped operating since 1952 from the
10 District, is that correct?

11 A Oh, when he sold out to the Gray Line he did. I think
12 it was four years, when he sold out to the Gray Line and he
13 worked for the Gray Line for four years, I think.

14 Q He sold out when? In 1957, didn't he?

15 A It was somewhere around there. I am not real sure.

16 Q I understood your testimony to be that you as of today
17 or at the present time are selling sightseeing tours being
18 originated by Mr. Gadd in the District of Columbia?

19 A Yes, I am at the present time.

15 MR. GADD: This takes in June, July, August, Septem-
17 ber and October, the months that you would be able to judge
19 where the business -- determine where the business is from.

19 MR. FOWLER: All right. So what these are, these
21 show where you have initiated your business for the last so
23 many months?

23 MR. GADD: Yes, sir.

23 MR. FOWLER: In the District -- I mean any place in the
25 metropolitan area?

25 MR. GADD: Yes, sir. Washington and Virginia, sir.

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1 And here is a tally sheet that I only tallied last
2 night counting the number of tours for Virginia is 434. And on
3 this side is Virginia, on that side, and this is for the Dis-
4 trict of Columbia, Washington, D. C.

A - 35

1 Q Let me show you a copy of that certificate, sir,
2 and ask you if you recognize that as being a copy of the
3 certificate that is now held by your company from this Com-
4 mission.

5 A It is, sir.

6 Q Would you look at that certificate, Mr. Gadd, and
7 tell me where therein you are authorized to conduct any
8 sightseeing operations originating in the District of
9 Columbia?

10 A There is none.

11 Q You know that, don't you?

12 A I do, sir.

13 Q As a matter of fact, that was one of your objec-
14 tions to the Commission's prior decision, that you were not
15 given the right to originate sightseeing tour movements within
16 the District of Columbia. Isn't that right?

17 A I make the statement that it was taken from me,
18 picking up in Washington, D. C., yes, sir.

19 Q But that was one of your objections, that you
20 didn't get that right in the proceeding and in your existing
21 certificate, isn't that right?

22 A That is right.

23 Q And that is one of the things you are seeking in
24 this proceeding, is the right to pick up in the District
25 because you do not now have it, isn't that right?

1 A That is right.

2 Q So you have knowingly conducted the operations from
3 the District of Columbia since the date this certificate was
4 issued without certificated authority from this Commission,
5 isn't that right, sir?

6 A Correct, sir.

20 Q So you know you are not abiding by the law now?

21 A No, sir, but I have to make a livelihood. I have
22 to eat. I have to make a livelihood.

23 MR. FOWLER: You mean "No, sir," you are not abiding
24 by the law? Is that what you mean?

25 THE WITNESS: Yes, sir. If you would refer to it as

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1 a law, yes, sir.

2 BY MR. KAYN:

3 Q Well, the regulations of this Commission?

4 A Yes, sir.

5 Q And isn't it true that whether you win this case or
6 not, you are going to continue to do what you are doing?

7 A I have to make a livelihood. I would probably
8 continue, yes, sir. I have to make a livelihood. That is
9 right.

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Q All right. Now I am asking you, sir, have you now shown me the cards that you have used to compile Exhibit No. 1 with respect to June 1968, for the District of Columbia?

A For the month of June?

Q Yes.

A Yes, sir.

Q All right. Now, if we can go off the record and then we will go on the record, Mr. Examiner.

(Discussion off the record.)

BY MR. KAHN:

Q Mr. Gadd, in the off the record examination you have referred to the cards and shown that you operated from the District of Columbia on June 3rd, June 11th, June 12th, June 13, June 14, June 15, 18th --

A Mr. Kahn, I already told you I operate from the District of Columbia.

Q Just a moment, sir.

20, 21, 23, 25, and 26th in the transportation of passengers on your tours. Is that correct, sir?

A Correct, sir.

Q And these tours were either in the District of Columbia or to points and places in Virginia and return; is that correct, sir?

A That is correct.

Q And they were all performed in your 17-passenger Mercedes Bus?

A That is correct, sir.

Applicant's No. 1

D. C. APPEX NO. 1

Pick-up ^{VA} Service
June 77

June 66

July 121

148

Aug 125

Aug 180

Sept 70

Sept 120

Oct 111

Oct 116

Virginia 434

Washington 564
June July Aug
Sept Oct

Now, I will be willing to transmit your motion to Commission, but I would suggest the better thing to do, Kahn, would be to put it in writing asking that while matter has been set for hearing on the grandfather and been consolidated for hearing and decision, you move the order be set aside and decided separately.

MR. KAHN: All right.

MR. LIIPPERT: May I proceed?

MR. CUNNINGHAM: Yes.

BY MR. LIIPPERT:

Q Mr. Stevenson, do you as a motel operator have any feeling one way or another about whether you would like to have a sightseeing service available to you?

A Yes, I have.

Q Could you tell us what type of service you would like to have available to you to facilitate your operations of the Olde Colony Motor Lodge?

A I would like that service to be as personalized as possible. By that, the smaller the group the more personalized it is, rather than a group of 30, 40 or 50 people.

Q Why do you say that, sir?

A It is more or less the same as a small classroom -- the fewer number of students. Persons in smaller groups can hear what is said, whether inside the conference on a public address system --

every day at a certain time and picks up guests. He is available on call, and this is a personalized service that I feel that I need in a small motel. Possibly, if I had a thousand guests, or something or other, and the number of guests who come every day was of a larger magnitude for that kind of personalized service would not be the same, but with the number of motels around in Virginia that are of a small size, one way or another most of them find some kind of personalized service with limousines or special guides, and so forth.

Q Wouldn't the availability of a limousine sightseeing service meet your needs as a small motel, a relatively small motel operator?

A Relatively speaking, I would say yes, I have used limousine service over a period of years. I feel that in some cases a limousine is not quite large enough because we would or we do get groups who are staying at the motel who know one another, either because they have met at the motel and go out sightseeing, and want to be able to stay together on their tour while they take the tour, and a medium sized bus is a happy compromise between two extremes.

Q Do you feel that it is desirable that a variety of these services be available -- that is, as far as the capacity of the vehicle goes?

A Yes, sir, I think there should be large bus services available, and medium size bus services available, and

MR. SMITH: I didn't get the answer to your question to whether he is presently using White House. Is he or is not?

BY MR. LIFFERT:

Q Are you now using White House, sir?

A Yes, I have the sign, you know, White House.

Q Do you recommend White House service to your guests?

A Well, I tell you, if anybody asks me, you know, what is the thing, a lot of people, two or three people or a limousine, and then I recommend a limousine signing, that is if they ask me my opinion. But we give, you know, the brochures, they pick them up and come to us and say what do you recommend as the best for two people, three, or three, so we recommend the limousine.

Q Now, when you recommend a limousine, whose limousine do you recommend?

A Well, Mr. Gadd, and I have Mr. Milling --

Q You recommend Mr. Milling for limousine service?

A Yes.

Q Under what circumstances do you recommend Columbia limousine?

A The people, they ask for not so many people. Then I recommend the limousine, because you see them in the limousine, how many people they take, they ask, four or five people, the most seven.

PASSENGERS HANDLED

IRA F. CLARK
D/B/A COLUMBIA SIGHTS & SOUND COMPANY

JANUARY - AUGUST, 1963

MONTH	MOTELS SERVED	PASSENGERS
January	Olde Colony	16
Washington Metropolitan	Colonial Village	3
Arden	Motel 50	3
	Towne	10
	Virginia Motel	2
	Total	34
February	Olde Colony	15
	Towne	10
	Motel 50	3
	Colonial Village	3
	Virginia Motel	2
	Total	33
March	Towne	24
	Motel 50	4
	Olde Colony	17
	Pentagon	4
	Total	49
April	International I	2
	Olde Colony	76
	Towne	55
	Motel 50	50
	Virginia Motel	2
	Pentagon	8
	1233 Lawrence, N. E.	4
	3216 So. Oak	3
	6625 3rd St. N.E.	2
	Total	206
May	Motel 50	58
	Olde Colony	57
	Towne	43
	Annapolis	2
	International I	1
	Total	161

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June

Motel 50	77
Olde Colony	129
Towne	91
Virginia	2
Howard Johnson	1
South C	3
Lincolnton	2
Airwayte	4

Total 309

July

Motel 50	113
Olde Colony	129
Towne	128
Marriott Inn	5
Virginia	10
P. A. U.	2
Tenaco	4
4404 So. 1st	2
Park Arlington	5
6624 13th St.	3
706 Devon Pl.	3

Total 404

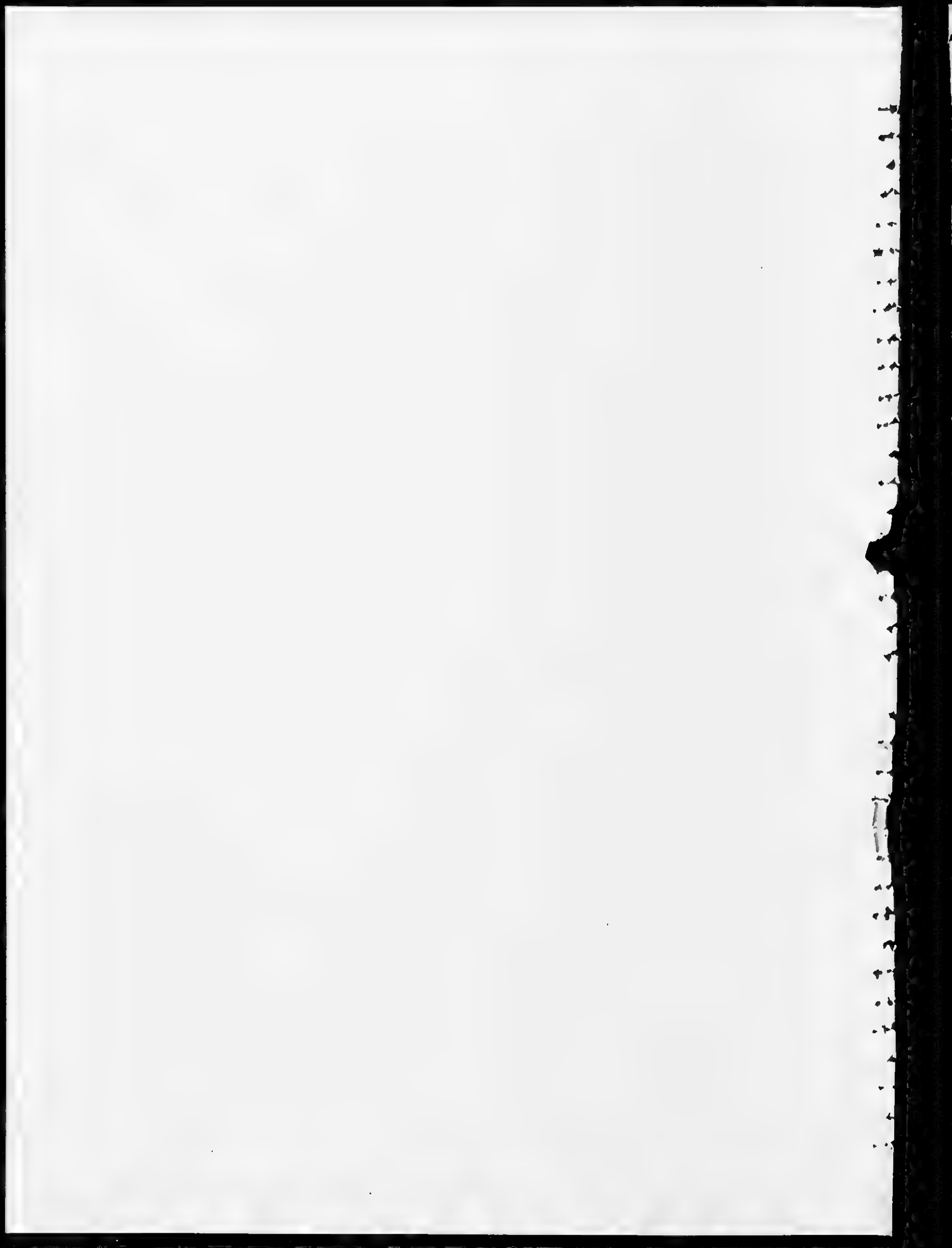
August

Olde Colony	64
Motel 50	99
Towne	71
American	31
Clarendon Hotel	2
Willard	3
Virginia	3
Roller Inn	4

Total 277

Grand Total 1,473

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23762

BRIEF

IRA F. GADD T/A COLUMBIA SIGHTSEEING COMPANY

Petitioner

v.

INTERSTATE COMMERCE COMMISSION,
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

Respondent

D. C. TRANSIT SYSTEMS, INC.
WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, INC.,
ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY,
THE GRAYLINE, INC.

Respondents-Intervenors

PETITION TO REVIEW ORDERS AND DECISIONS
WHETHER GADD'S RIGHTS OF FREE ENTERPRISE
HAVE BEEN VIOLATED BY INTERSTATE COMMERCE
COMMISSION OR WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION

United States Court of Appeals
for the District of Columbia Circuit

FILED DEC 17 1970

Nathan J. Paulson
CLERK

Ira F. GADD
2509 Arlington Boulevard
Arlington, Virginia 22201
MOVANT

(1)

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IRA F. GADD T/A COLUMBIA SIGHTSEEING COMPANY REQUESTS
REVIEW OF DECISIONS OF INTERSTATE COMMERCE COMMISSION
AND WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
WHETHER GADD'S CONSTITUTIONAL RIGHTS OF FREE ENTERPRISE
HAVE BEEN VIOLATED AND REQUESTS THE ISSUE OF A CERTIFICATE
FOR OPERATION OF SPECIAL OPERATION OF SIGHTSEEING, AND
CHARTER.

STATEMENT OF THE CASE

* I.S.A. Petitioner, Gadd, began the sightseeing business in 1946, with one limousine, and a partner. However Gadd acquired the partner's share of Columbia Sightseeing Company in February 1950. He maintained an office in Washington and printed descriptive brochures of his tours, and distributed them for obtaining passengers.

* Application filed November 14, 1950.

I.S.B. Operation consisted of five limousines, pick-up service for tourists in Washington; also pick-up and convoy service for the motel patron on the highways which service he pioneered. We served motels in the Commercial Zone and served motels beyond the Commercial Zone. Pick-up service extended past Rockville, Maryland and past Laurel, Maryland; service in Virginia south to Ft. Belvoir and west past Fairfax Circle. When the limousine was filled we would convoy tourists driving their cars.

I.S.C. Requested authority of the Interstate Commerce Commission to serve the above mentioned area with buses.

We had more tourists than could ride in the limousines; the problem before us was to get more seats which was demanded.

STATEMENT OF THE CASE

* I.S.D. Authority requested, certificate of public convenience and necessity, in interstate or foreign commerce, by motor vehicles, over irregular routes as a common carrier, of passengers in special operation sightseeing tours and charter, in motor vehicles having a capacity of nine or more passengers in the District of Columbia, beginning in Maryland within 25 miles of the District of Columbia, extending to Mt. Vernon, Arlington National Cemetery and Alexandria, Virginia and extending 35 miles to points in Virginia and on highways extending to the District of Columbia.

* I.S.E. The request for charter was rescinded at the hearing. My counsel advised the rescinding of charter, since there were eight large influential bus carriers present as protestors.

* I.S.G. Public hearing was held January 4 and 5, 1951, during which the applicant and ten witnesses appeared in support of the application. The ten witnesses testified that the service was needed and that and that the present bus service was inadequate to serve the tourists. Protestors and intervenors in opposition appeared. Only three of the eight conducted tours. One of these conducted tours for

STATEMENT OF THE CASE

groups only; 25 people was the minimum. One bus company served only downtown; the other company served Union Station. If any tourists desired tour service, they had to go to Union Station. The eight protestors presented exhibits.

The Joint Board recommended denial.

I.S.H. That it was questionable if the testimony of ten witnesses proved a need for the service, also that the present service was adequate; and another operator would create more competition, and the success of the applicant was doubtful, and also it was questionable if the operation would serve the public.

Denial November 7, 1951.

Commissioner Cross dissents.

This report was not printed in full in the permanent series of the Motor Carrier Report of the Commission.

This case has been before this Court previous pleadings, Ira F. Gadd vs. Washington Metropolitan Area Transit Commission, No. 19,077.

STATEMENT OF THE CASE

* Consequently, the year of 1946 Gadd began the sightseeing business, as well as the date which the application was filed September 14, 1950 whereas these dates automatically make Gadd eligible for the "grandfather clause", which has been refused by the Commissions, the above application was filed more than eleven years before the Washington Area Commission was established in 1961.

Does this Honorable Court remember that this Honorable Court granted the same type of certificate to a man who started sightseeing business many years after Gadd, this applicant. This is not an admonition, only a reminder. I am very happy this man received the certificate; our great nation was built upon competition.

REFERENCE TO RULINGS

STATUTES INVOLVED

INTERSTATE COMMERCE COMMISSION
BUREAU OF OPERATIONS
MOTOR CARRIER INFORMATION BULLETIN
NO. 1
ISSUED OCTOBER, 1968

The special rules governing the filing and handling of each application are set forth under Title 49 of the Code of Federal Regulation, part 1056.

How applications are decided.

* All applicants must show they are fit, willing and able to perform the service proposed and comply with the Commissioner's regulations. Common carrier applicants must show that public convenience and necessity require the service proposed, whereas, contract carrier applicants must show the proposed service is consistent with the public interest and the national transportation policy.

Section 203(b) of the Interstate Commerce Act,
49 U.S.C. §303(b):

"(b) Nothing in this part, except the provisions of Section 204 relative to safety of operation or standards shall be construed to include . . . (8) the transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such

REFERENCE TO RULINGS

This evidence is presented to prove that Gadd's constitutional right of free enterprise was violated.

The following statements and the following information were made and presented before this Honorable Court by the counsel for the following petitioners:

Case No. 22893, pages 15 and 16

D. C. Transit Systems, Incorporated

and

Washington-Virginia-Maryland Coach Company, Inc.

Pursuant to this section, Transit was granted Certificate No. 5 which provided in part the following authority:

B SPECIAL OPERATIONS

(1) Round-trip or one way:

- (a) Between points in the District of Columbia
- (b) Between points in the District of Columbia on the one hand, and points in Montgomery County and that portion of Maryland, north of John Hanson Highway, on the other
- (c) Between points in Montgomery County and that portion of Prince Georges County, Maryland, north of the John Hanson Highway

(2) Round-trip or one-way sightseeing or pleasure tours;

- (a) From points in the District of Columbia to points in the Metropolitan District
- (b) From points in Montgomery County, Maryland, and that portion of Prince Georges County, Maryland, north of the John Hanson Highway to points in the Metropolitan District.
- (c) From points in Arlington and Fairfax, Virginia to points in Montgomery and Prince Georges Counties, Maryland.

REFERENCE TO RULINGS

W.V. & M. was granted Certificate No. 4 which contained in part the following authority:

- (b) Special operations
Round-trip or one way:
Between points on its regular routes in Virginia except the Dulles International Airport, authorized herein, on the one hand, and points within the District of Columbia, on the other hand.

Thus both carriers were granted authority to perform special operations as noted above, without the requirement of proof that the public convenience and necessity would be served by such operations.

This statement was made before this Honorable Court by the counsel for Capital Transit and W.V.B.&M. bus carriers.

REFERENCE TO RULINGS

municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction;
. . . "

ICC EXTENDS COMMERCIAL ZONE FOR TRUCKS IN GROWTH AREAS

(Washington Post April 20, 1970)

The Interstate Commerce Commission has extended the Washington commercial zone for truckers to include rapid growth areas of Fairfax and Loudoun counties.

Prime advantage of the enlargement will be to reduce time and costs in moving cargoes deeper into Northern Virginia. Previously truckers in the Washington area were restricted to the eastern third of Fairfax County.

Shipments between Washington and, for example, Reston had to be handled as interstate commerce because it was between two shipping zones.

In its order, the ICC included all Fairfax County in the Washington zone for the first time, parts of Loudoun County, and the Dulles International Airport complex.

"We are of the opinion that the evidence has clearly shown the proposed area to be economically a part of the base municipality of Washington, D. C., to the point that the proposed area and Washington are interdependent," the ICC order stated.

A large portion of the population of Fairfax County, the ICC noted, works in Washington and the District is the "cultural, social, business and recreational center for the residents of the proposed area."

REFERENCE TO RULINGS

Supporting a petition to expand the zone were Fairfax County, Fairfax County Industrial Authority, Federal Aviation Administration, City of Fairfax, Town of Herndon, and the Town of Vienna.

The Washington commercial zone includes the District and nearby portions of the Maryland and Virginia suburbs. The redefinition of the Washington zone was the first major change since 1948 except for small parcels annexed near Ft. Belvoir in 1952 and Tysons Corner in 1964.

The Fairfax County Industrial Authority, which spearheaded the trucking zone expansion drive, is also studying the feasibility of making Dulles Airport a foreign trade zone--a generally unpopulated area where foreign goods can be stored custom-free.

Russell G. Hanson, executive director of the Fairfax authority, welcomed the ICC action. The decision will help attract new companies who have been considering locating in the Fairfax area, he said.

The Constitution of the Commonwealth of Virginia, Article 1, Section 1, provides:

"EQUALITY AND RIGHTS OF MEN. That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact deprive or divest their posterity, namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."

The legal note to the above provision in the Constitution of the State of Virginia, proceeds to define the term "liberty":

REFERENCE TO RULINGS

"The liberty of the citizen which is guaranteed by the Constitution of the United States and of this State embraces not only the right to go where one chooses, but to do such acts as he may judge best for his own interest not inconsistent with the equal rights of others, to follow such pursuits as he may deem best adapted to his facilities and will afford him the highest enjoyment, to be free in the enjoyment of all his faculties, to be free to use them in all lawful ways, to live and work where he will and to earn his livelihood by any lawful calling"

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

87 PAGE 427

No. 19,077

September Term, 19 64.

Ira F. Gadd,
Petitioner,
v.

Washington Metropolitan Area
Transit Commission,
Respondent,

D. C. Transit System, Inc.,
Alexandria, Barcroft and
Washington Transit Company,
The Gray Line, Inc.,
Diamond Tours, Inc.,
Washington, Virginia & Maryland
Coach Company, Inc.,
Intervenors.

United States Court of Appeals
for the District of Columbia Circuit

FILED JUN 3 - 1965

Nathan J. Paulson
CLERK

On Petition to Review Orders of the Washington Metropolitan Area
Transit Commission.

Before: Washington, Wright and McGowan, Circuit Judges.

JUDGMENT

This case came on to be heard on the record from the Washington
Metropolitan Area Transit Commission, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this
court that this case is remanded to the Washington Metropolitan Area
Transit Commission for further proceedings not inconsistent with the
opinion of this court.

Per Curiam.

Dated: JUN 3 - 1965

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,077

September Term, 19 65

Ira F. Gadd,

Petitioner,

v.

Washington Metropolitan
Area Transit Commission,

Respondent.

D. C. Transit System Inc.,
A. B. & W. Transit Company,
The Gray Line, Inc.,
Diamond Tours, Inc.,
W. V. & M. Coach Company, Inc.,

Intervenors.

Before: Washington, Wright, and McGowan,
Circuit Judges, in Chambers.

ORDER

On consideration of intervenors' motion for stay of judgment, and of petitioner's answer thereto, and it appearing that the time for filing a petition for writ of certiorari in the Supreme Court of the United States has expired, and it further appearing that counsel for said movants have informed the Clerk that intervenors will not file a petition for writ of certiorari, it is

ORDERED by the court that the aforesaid motion is dismissed as moot.

Per Curiam.

Dated: OCT 7 1965

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 7 1965

Nathan J. Paulson
CLERK

March 16 or 17 - 1970 Washington Post ICC: 'Graveyard for Hacks'?

That's What It Is, Say Ralph Nader's 'Raiders,' Who Want It Dismantled

By William H. Jones

Washington Post Staff Writer

Who needs the Interstate Commerce Commission?

That question, to paraphrase the current advertising campaign of one ICC-regulated industry, was asked last week in a massive study of the agency by Ralph Nader's "raiders."

Given its present status as "an elephant's graveyard for political hacks," according to the seven young law students who prepared the study, the answer to the question is that the ICC should be quietly phased out of existence.

Given both the question and the answer, a good number of people who work for the nation's oldest regulatory agency—and not a small number of those regulated by it—have asked in return: who needs Ralph Nader?

Nader has been dismissed with similar challenges before—by members of

News Analysis

the Federal Trade Commission, officers of General Motors, and others tired of his continual probing, court suits and speech-making on an enormous variety of subjects.

Few people, however, can deny the impact of consumerism on the American scene ever since Nader went after Detroit's seeming lack of concern about automobile safety. The day (only three years ago) when a potential car-buyer could be told by the showroom salesman that seat-belts "aren't really that important," is gone forever, thanks in large measure to Nader and his colleagues.

Nothing demonstrated the Nader impact better than what happened at the ICC between the day it was announced in the spring of 1969 that the agency would be scrutinized by a group of mod young law students, and last Monday morning when the students went to Capitol Hill to release their report.

Taken Action

By then, the ICC had already taken key actions in a number of areas to ease problems cited by the students. While some ICC staff members contend these developments represented routine conclusion of commission activities, the flurry of activity may have blunted the public impact of the Nader report.

The Nader team study, for example, called for a broad overhaul of ICC regulation of the home-moving industry—



By Bob Burchette—The Washington Post

RALPH NADER

... who needs the ICC?

less than two weeks after the agency announced tough new regulations that duplicate in some respects the recommendations of the Nader associates. Robert Fellmeth, a Harvard Law School student who headed the ICC study, conceded he was "moderately pleased" by ICC's action on home-moving, although a major complaint by the students—that the ICC doesn't investigate home-moving tariffs—wasn't dealt with in the new regulations.

Racial Charges

Similarly, the students' criticisms of rail rate procedures came on the heels of an agency decision to conduct a full investigation of all railroad charges, and attacks on the agency's do-nothing policy about a persistent boxcar shortage followed several orders by the ICC to combat the problem.

On the subject of racism, the Nader team charged that ICC's systematic ex-

clusion of any new competitors for existing carriers had the additional effect of virtually eliminating the development of minority-owned businesses. Several past examples were cited. A month before the Nader study was made public, however, ICC backed a plan for a black-owned charter bus company in Harlem over the vigorous objections of the nation's leading bus firms.

On the other hand the ICC rejected again last November an appeal by a black owner of a St. Louis moving firm for a nationwide license, in the face of sharp protests by established nationwide concerns and despite complaints from Negroes that they suffer discrimination at the hands of the predominantly white moving industry.

Even though the ICC may have started to move the students believe it still should get a death sentence because of its "institutional corruption."

After years of job interchange with industries it regulates, acquiescence in industries plans to avoid competition and "intimate" social relationships between regulator and regulated, the Nader-advised students charge the "ICC has become an extension of the industry . . . in a very real sense, the industry regulates the ICC."

Ask New Agency

To continue needed regulatory functions the students called for a broad transportation agency, incorporating the Civil Aeronautics Board and Federal Maritime Commission, a concept similar to that endorsed in a 1961 Senate study.

The idea wasn't new in 1961 either, and few observers expect that Congress is ready to jump into the heady regulatory waters at the moment with sweeping reorganization plans. The most constructive results of the Nader report, then, are likely to be internal change at the ICC, which can be expected to regulate for many years to come.

The Nader study also presented challenges to the White House and Capitol Hill.

"If the regulation of transportation is any indication," said Fellmeth in Senate testimony last week, "the American political system is failing and crumbling—not in the streets, not at the ballot box, but in the panelled offices of industry rates bureaus and executive suites and in the quiet corners of government agencies."

See NADER, F3, Col. 1

ARGUMENT

I.A.1. Gadd, the applicant, d/b/a Columbia Sightseeing Company, began the business in 1946 and pioneered serving the motel patrons on the highways near Washington. At the hearing ten motel representatives testified that the regular bus that passed their respective motels was unsatisfactory and they were in need of pick-up service for their guests who desired to go sightseeing. The usual buses were irregular, or were loaded, or would not stop, and the bus stop often was far from their motels, and there were no sidewalks for the safety of the people. Traffic was referred to as heavy, therefore, walking to the bus stop was a risk of an accident and possibly a disaster. I have known of two people killed while crossing Highway No. 1.

The Washington hotel patron was safe enough from the automobile and truck traffic. The hotels are surrounded by sidewalks and, in addition, there were traffic lights at the intersection for their safety. Nevertheless the hotels have pick-up service at the curb or from the hotel driveway.

Wherefore these distant and remotely located motels on the highway were denied this pick-up service. Therefore the Commission's denial of the motel patron convenience which he needed plus the dangerous walk to the bus stop, was continued for the motel patron.

ARGUMENT

There, as the motel owner's business was damaged, the applicant Gadd was injured from the unjust decision. Gadd has endured 20 long years of waiting, he also lost numberless hours of his time, and many of these hours were hours of anguish, whereas it is difficult to determine accurately the amount of money Gadd would have attained during the 20 years, provided the authority was granted for the operation.

Public hearing held January 4 and 5, 1951, during which the applicant, the protestors and the intervenors in opposition appeared with witnesses and exhibits.

The Joint Board No. 68 recommended denial of the application. The following statements and answers are from the Commissioners' Report, Sheet 2 thru Sheet 12:

When reading the Commissioners' Report it seems they are endeavoring to present the operation as a taxicab operation. The operation was definitely limousines.

Statements from Sheet 3, paragraph 4. The Commission seems to have made errors in writing these paragraphs, or possibly they were guessing what the operation really was, or is it pretense of not knowing.

However we did ride tourists from within the Commercial Zone; we also would ride tourists from beyond the Commercial

ARGUMENT

Zone; as an example, people would ride from past Fairfax Circle, or near Rockville, or past Laurel, all these locations were past the Commercial Zone. The tourist from the motel beyond the Commercial Zone was in need of service, because other bus service was almost absent. However, the limousine was to be used only when there were a few tourists. A large bus was to be garaged or parked near the end of each highway, or the end of each operation, beginning at the end, as requested in the application.

Sheet 4 - I.5. Charter operation was rescinded at the hearing. There were eight bus carriers present. Seven were large influential bus carriers. My counsel advised me it was almost impossible to get charter operation when all the large influential bus carriers were present. However, charter is a dire need and necessity. With the exception of mass transportation operators every bus company listed in Washington or near Washington has charter operation. It is a large source of income. The sightseeing business now is more competitive than it was twenty years ago. When one of the mass transportation operators begin paying 40 percent or more commission to the motels and hotels the sightseeing profit is now less for the service; it is also very seasonal and bus payments on equipment have to be made every month.

ARGUMENT

The only bus carrier that could stay in business without charter operation is the mass transportation operators.

Sheets 4 and 5 - I.7. In this paragraph the Commission mentions that ten motel owners or managers testified that the pick-up service was a positive need from their motel; that many of their guests did not want to drive to Washington, and also some of these tourists would refuse to drive their cars and follow the limousine; that a convoy service was an absolute necessity when the limousine was filled as some of their guests would leave the motel and return home, rather than drive their cars and follow the limousine into Washington. Several witnesses pointed out the fact that, among these tourists, there are often young children and elderly persons.

There were a number of times that we convoyed more tourists into Washington than we could conduct on a tour. We would endeavor to arrange a tour with another company, we requested that they honor our ticket issued to the tourist, which the bus company would be paid later. This arrangement was refused. Whereas we requested them to rent us a bus, they again refused, so we call another bus carrier, further endeavoring to rent a bus and explained our situation, but we were again refused service.

ARGUMENT

Sheet 6, I.8. Statement. Richmond Greyhound Lines, Exhibit No. 3, which operates, among other points, between Washington and Richmond, Virginia over Highway 1. About 26 schedules are operated daily in each direction between these points, and many of these include two or more buses. Some buses make only limited stops, while others make all of the stops. No sightseeing service is conducted.

Answer. Richmond Greyhound Lines, Exhibits No. 3 and 4. None of the 26 buses as stated above were properly timed for the tourist. Only one bus could be used and that bus would arrive at the Washington Terminal one hour and forty minutes before sightseeing departure time. It would be unfair or unjust to ask tourists to ride this bus and then wait one hour and forty minutes. Many of the 26 buses were express buses and a number of the 26 buses arrived by a Maryland route, through T.B. Maryland.

EXHIBIT NO. 3 - Schedules as shown, only two buses possible to be used. The first bus arrived one hour and forty minutes early for tours, and the second bus arrived fifteen minutes late for tours. There was no sidewalk to bus stops.

Nevertheless, this bus company protested the applicant's application, appearing and stating their service was well qualified and adequate for the tourist. However, there was an admission they did not conduct any sightseeing service for groups or individuals.

ARGUMENT

Sheet 6, I.8. Statement. Capitol Greyhound Lines, Exhibits 4 and 5, operate between Washington and Winchester. Seven schedules in each direction, over Highway 7.

Answer. Capitol Greyhound Certificate stated that no local service is permitted Washington and West Falls Church. This operation did not pass any motel or tourist court near Washington, that they were not permitted to stop for passengers. This company also operated to Annapolis, Maryland over Highway 50. This operation did not pass any motel or tourist court, that they were permitted to stop near Washington. Any local stop would be in violation of their operating authority, as shown on Exhibits 4 and 5 as presented.

Sheet 6, I.10. Statement. Pennsylvania Greyhound, Exhibits 6, 7, 8 and 9, operates between Washington and Baltimore over Highway 1. It operates 95 schedules in each direction between these points. In many instances, schedules include more than one bus. Some buses make only limited stops, while others make all designated stops. Buses are available for chartering, but sightseeing service is not conducted.

Answer. Pennsylvania Greyhound operation between Washington and Baltimore over Highway 1. Operation authority did not permit any local service between Washington Terminal and College Park. Their presented schedules marked Exhibit No. 6, were definitely all express buses. There were no local stops. Another Exhibit No. 7, Table 9, no flag stops.

ARGUMENT

shown, 3 buses daily in each direction, making only three stops which were Laurel, College Park and Hyattsville. These three buses were improperly scheduled for the tourist near Washington. However, there were no sidewalks on these busy dangerous highways for the tourist to walk to or from the bus stop. Exhibit No. 8, Table 12, also did not have any flag stops nor any local stop between the terminals which were in the towns of Laurel, College Park and Hyattsville, whereas again there were no sidewalks along the highways. Here again these buses were improperly scheduled for the tourist. Exhibit No. 9, Table 17, here again there were no flag stop buses. Again, these buses stopped in the three towns, Laurel, College Park and Hyattsville. Again, there were no sidewalks. There were two buses that could be used from the three towns although again they were improperly scheduled for the tourist. Schedules, one bus arrived one hour and thirty-five minutes early; the other bus arrived fifteen minutes late for the tour (tour departure 9:30 A.M.). Many of the scheduled trips by-passed Washington. Most of the buses were express buses, offering no sightseeing service.

Sheet 7, I.11. Statements. Capital Transit Company, Exhibit No. 10, provides mass transportation service in the District of Columbia and into Maryland as far as Rockville on U.S. Highway 240 and as far as College Park on U.S. Highway 1. As part of its business, it offers and provides a

ARGUMENT

sightseeing bus service. These tours ordinarily start from the District of Columbia and extend into Virginia as far as Mt. Vernon. Only one instance was recited of a pick-up outside the District of Columbia, and that was Rockville. This service will only be provided subject to a minimum of 25 individual fares. Exhibit No. 10 presented.

Sheet 7, I.11. Answer. Capital Transit Company. They have made statements of their bus service to Rockville and service to College Park on the highways. Notwithstanding, they did not present any schedules to prove the statements. Ordinarily a schedule is presented to confirm the operation. I am not convinced the end of the bus line was Rockville, also the College Park operation. Most of the route was off Highway 1. However, Capital Transit did present a tariff for groups, marked tours without guide service. This is a charter service, not sightseeing. Exhibit No. 10 presented.

Sheet 7, I.12. Statement. Blue and Gray Motor Tours Inc., in business about forty years, holds authority for sightseeing operation from the Washington Commercial Zone to all points in Maryland and Virginia. However, as a matter of practice, it limits its present operation to tours within the District of Columbia and tours from the District to such nearby points in Virginia as Arlington Cemetery, Alexandria, and Mt. Vernon. For the convenience of persons stopping outside the District, it provides free parking in a lot near

ARGUMENT

Union Station in Washington, and its buses pick up prospective passengers at different bus terminals in Washington. In past years it obtained a substantial amount of business from the suburban areas of Washington, but this business is largely lost, allegedly due to additional competition. The company owns and operates a number of limousines and about 32 buses. In the busy season, it employs up to 140 persons.

Answer. Blue and Gray Motor Tours, Inc. The admission of, that it limits pick-up service to the District of Columbia. The parking lot it provided for tourists was between two hotels. Soon the motels learned they were sending their guests to a hotel parking lot. That arrangement was short-lived, beside the statement of, in the busy season, it employed up to 140 persons. Evidently this statement confirms Gadd's testimony that the Grayline had more business than they could conduct properly. This statement also refutes the declaration of the Commission, "too much competition." This company often had more business than they could conduct on tours. I have known days when they have chartered fifty buses; this was many more buses than they owned. There was definitely a need for more competition, to improve the operation.

Sheet 8, I.13. Statement. Washington-Virginia-Maryland Coach Company, Exhibits Nos. 11, 12 and 13, operates a mass transportation service over numerous bus routes between the District of Columbia and points in Arlington and Fairfax

ARGUMENT

Counties, Virginia. No sightseeing service is performed.

Answer. Washington-Virginia-Maryland Coach Company presented three Exhibits Nos. 11, 12 and 13. Exhibit 11 traversed Wilson Boulevard. There were no motels on Wilson Boulevard. Exhibit 12 route, by Wilson Boulevard to Westover to Falls Church and to Jefferson Village. This bus passed two motels in West Falls Church. One bus each direction to City of Fairfax at 7:20 A.M. which is too early for the tourist. Exhibit 13 to West Falls Church Lee Highway which passed two motels. There were thirteen motels beyond Fairfax Circle. These motels did not enjoy the W.V.&M. service. They were off the W.F.&M. route. Suppose a tourist rode one of these buses to Washington. How would he know where to find a tour? West of Fairfax Circle, within three miles there were 13 motels. These motels were positively in need of service. The W.V.&M. does not conduct sightseeing tours. Nevertheless they do hold a certificate. They did not show any need nor any convenience or necessity to get this certificate--this certificate lies dormant.

Sheet 8.I.14. A.B.&W. Transit Company, no exhibit, operates mass transportation service over several bus routes between points in Virginia and the District of Columbia, including U.S. Highway 1 between Washington and Ft. Belvoir, Virginia. The company owns 197 buses. Since its routes pass many points of interest to tourists and sightseers, its passengers include some sightseers. However, it does not perform sightseeing service.

ARGUMENT

Answer. A.B.&W. Transit Company. This company appeared at the hearing as a protestant stating how many buses were operated on Highway 1. However they failed to present any schedule to verify the number of trips and the routes. Usually a bus carrier presents a schedule of operation. When none is presented it creates a dubious opinion. If a tourist boarded one of these buses, he would have to change buses in Alexandria to arrive in Washington. After riding two buses, he has not solved his problem as he has to find a sightseeing tour. Would this be considered satisfactory transportation for sightseeing for any tourist? This bus company has never operated special sightseeing operation. Notwithstanding they were issued a certificate and did not prove convenience and necessity; yet this certificate lies dormant.

Sheet 8,I.15. Diamond Tour Inc., no exhibit, has been in the sightseeing business eleven years. Its operation is within the District of Columbia and from the District to points of interest in Maryland and Virginia, including Arlington National Cemetery, Alexandria and Mt. Vernon. It uses both buses and limousines. Its passengers ordinarily include a relatively small number from Washington suburban points.

ARGUMENT

Answer. Diamond Tours Inc. operation two buses and one limousine for sightseeing tours. Usually only one bus was operated. Diamond had only one pick-up point, Union Station. He refused to serve the hotels or motels. Anyone who phoned for a tour was told they would have to come to Union Station, the only pick-up point. Diamond is one of the two companies that operated special sightseeing that was requested by applicant.

ARGUMENT

Sheet 9, I.18. Statement. Not satisfied from this record that applicant could set up and maintain operation as proposed?

Answer. Witness testified we had to convoy tourists into Washington, the limousine seats were filled, and some tourists refused to accept the convoy service.

Statement. Nor are we satisfied that the operation would be a profitable one for applicant?

Answer. When a profit is made with limousines, when riding only six to eight passengers. Of course the bus would ride 45 passengers, this is 7 times as many passengers, the price per passenger was the same-- so the profit would be near 7 times greater. This simple demonstration gives any intelligent person the answer, more profit.

Statement, or a practical one for the public?

Answer. All the evidence clearly proves the service was positively needed, the testimony of ten motel representatives that they would use the service and that the present bus service was unsatisfactory and none of the eight protestors afforded the service. In addition, new motels are built each year, which increases the demand each year for this type of service.

ARGUMENT

Sheet 9, I.18, Statement. In addition to the great number of limousine operators providing service within the Washington Commercial Zone.

Answer. There were only two other limousines affording the service to the highway motel patron; they were often overloaded with more tourists than they had seats for.

Sheet 9, I.18, Statement. There are at least five or six large sightseeing companies which provide bus sightseeing service within the District of Columbia and between the District and numerous outlying points of interest.

Answer. This is an exaggeration. There was only one large bus sightseeing company in Washington, The Grayline, Inc. One company, the Diamond Tours, had two small buses and National Tours had one bus. None of the other bus companies conducted tours. Most of the other bus companies did provide charter trips, but no sightseeing tours.

Sheets 9 and 10, I.18. Statement. While these companies do not pick up or discharge passengers outside of the District, they have always included among their passengers who are guests of inns, motor courts, or tourist homes at Maryland and Virginia points in the suburban areas of the District.

Answer. It is doubtful that many tourists took buses from their place of lodging in Virginia and Maryland and

ARGUMENT

came into Washington seeking tours when tours service was available from their place of lodging.

Sheet 9, I.18. Statement. Some of these companies also have branch offices in terminal buildings of the principal bus lines that operate from and to Washington.

Answer. None of the bus companies had branch offices in the bus terminals, except the Grayline. They had a short counter, about three feet long in the Greyhound Terminal, but no branch offices as stated.

Sheet 10, I.18. Statement. All of these sightseeing bus companies complain of severe and increasing competition, and there is no doubt that, as alleged, this competition is being aggravated by the increasing number of limousine operators which operate under the exemption provision of section 203(b)(2)?

Answer. Exaggerated statement, when the school children arrived in the spring, or the tourist arrived during the summer months, the only large bus tour company, which was the Grayline, had more business than they could take care of. I have known when the Grayline filled their buses and chartered 50 buses and loaded these 50 chartered buses with their sightseeing guests. When the sightseeing season was here every sightseeing company had more business than they could serve, in the proper manner.

ARGUMENT

Sheet 10, I.18. Statement. The operation proposed by applicant would, in our opinion, further endanger the position of these sightseeing bus companies, and it would, as alleged by intervenors, have some detrimental effects upon the mass transportation companies that provide regular bus service between Washington and points in the Washington suburban area.

Answer. During the sightseeing seasons when the tourists arrive, all of the sightseeing bus companies have usually had more tourists than they could properly conduct on their desired tours.

Sheet 10, I.18. Statement. In these circumstances, we conclude that the available services as a whole are reasonably adequate for the sightseeing public and that the relatively small advantage that would inure to the public from the proposed operation is far outweighed by the greater disadvantages to the existing carriers and to the public service situation as a whole that would result from the operation proposed.

Answer. The ten motel representatives testified that the highway buses were inadequate and the bus schedules do prove the service was very unsatisfactory for the tourists while stopping at their motel. These ten witnesses endeavored

ARGUMENT

to convey to the Commission that the pick-up service was greatly desired and needed. Also the motel representatives stated there were very few of their guests who used the highway bus service.

Sheet 11, I.19. Statement. We find that the applicant has failed to establish that the present or the future public convenience and necessity require the proposed operation, and the application should be denied.

Answer. The applicant has afforded limousine service for Washington, D. C. and the motel patron on the highway, and could have afforded a much improved service with buses. Ten motel representatives gave honest testimony for the positive need of the bus pick-up service from their motels or tourist courts. One of the most important reasons for the granting of this authority was for the safety of the motel patron.

ARGUMENT

Two of the protesting bus operators of Northern Virginia that appeared at the hearing January 4 and 5, 1950, one operator presented a schedule, the other operator had only statements with no proof that they were affording service for the tourist that came to visit their nation's capital, after examining the schedule of service proved their entire operation passed only three of the highway motels and after investigating the other bus company schedule proved his buses were early for the tourist. If the tourist did get up early and board one of these buses, he would have to change buses again in Alexandria, whereas when he arrived in Washington this tourist still had a problem where to find a tour. These two respective companies were issued a certificate for sightseeing special operation, yet neither bus company was in the business and besides even today they do not offer a sightseeing tour for individuals from their own printed brochure, yet these two bus companies have acquired this type of certificate to operate special sightseeing -- yet this certificate is dormant, yet it has been more than twenty years since Gadd filed application for this authority. However Gadd pioneered this type of operation.

SUMMARY OF ARGUMENT

Gadd, the applicant, began the sightseeing business in 1946. We pioneered serving the motel patron from the highways. We served about 23 of the approximately 70 motels with five limousines; two years later we operated ten limousines.

During the season we had more passengers than we had seats, and we applied for authority to operate buses. Ten motel representatives testified that the bus service was positively needed. Most of their guests refused the convoy service. They also stated that the other type of bus service was unsatisfactory.

No. 1. The protestors made statements that their service was adequate for the tourist. However, their exhibits of schedules presented will prove their service was very inadequate.

No. 2. The protestors said that it was the wrong time of year to grant authority.

A. It was the proper time as it would give the applicant enough time to secure buses before the tourists arrived.

No. 3. The protestors said that a new operation would be hard on any of the present bus carriers and create competition.

A. All of the bus carriers had more passengers than they could transport and render the proper service for the public. One exception was Diamond Tours which refused to

SUMMARY OF ARGUMENT

pick up passengers at any hotel or any point other than Union Station. However, competition was needed to improve the service.

Gadd presented more witnesses testifying for the service than any previous hearing for service of this type.

Only a person with a preconceived opinion could vote against these ten witnesses, and the Commissioners disregarded the evidence. They seemed to be grasping at a straw, trying to support their predetermined decision.

Gadd has never violated any laws of any state requiring certain license or plates or insurance; they were secured as advised by the local government officials.

A large percentage of the carriers violate their authority almost daily. They pick up off their routes and out of their territory. There are violators who have been violators for more than ten years without being apprehended.

INTERSTATE COMMERCE COMMISSION

No. MC-112352

IRA F. GADD COMMON CARRIER APPLICATION

Submitted March 19, 1951.Decided November 7, 1951.

... Public convenience and necessity found not to require operation by applicant as a common carrier by motor vehicle, over irregular routes, of passengers, in special operations, in sightseeing tours, in vehicles having a capacity of nine or more passengers, (a) beginning and ending at certain points in Maryland and extending to Mount Vernon, Arlington Cemetery, and Alexandria, Va., and the District of Columbia, and (b) beginning and ending at certain points in Virginia and extending to the District of Columbia. Application denied.

Lester R. Conley for applicant.

Daryal A. Myse, S. Harrison Kahn, Manuel J. Davis,
William O. Turney, Robert N. Lowry, and Drew L. Carraway
for Interveners in opposition to the application.

REPORT OF THE COMMISSION

DIVISION 5, COMMISSIONERS LEE, ROGERS, AND CROSS
BY DIVISION 5:

Exceptions were filed by applicant to the order recommended by the joint board, and interveners replied thereto.

By application filed September 14, 1950, as amended at the hearing, Ira F. Gadd, of Washington, D. C., operating as Columbia Sightseeing Tours, seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of passengers, in special operations, in sightseeing tours, in vehicles having a capacity of nine or more passengers, (a) beginning and ending at such points in Maryland as are on U.S. Highways 1 or 240, and as are also within 25 miles of the District of Columbia, and extending to Mount Vernon, Arlington Cemetery, and Alexandria, Va., and the District of Columbia, and (b) beginning and ending at such points in Virginia as are on Virginia Highway 7 or U.S. Highways 1, 29, 50, or 211, and as are also within 35 miles of the District of Columbia, and extending to the District of Columbia. Nine motor common carriers of passengers oppose the application.

Applicant presently holds no operating authority from this Commission, but is engaged in the conduct of a sight-seeing service solely within the Washington commercial zone, as defined in Washington, D. C. Commercial Zone, 48 M.C.C. 460. This service is rendered on call, in vehicles having a rated capacity of not more than six fare-paying passengers, and is being performed under the exemption provided by section 203(b)(2) of the Interstate Commerce Act. See Motor Car. Operations, Washington, D. C., Mt. Vernon, Va., 51 M.C.C. 197, 204. This business was begun about five years ago by applicant and his then partner. In February 1950, applicant took over the business as his own. The business was started with one limousine but has grown to the point where five limousines are now used. An office is maintained in downtown Washington. Applicant obtains business in Washington and, to some extent, from points in Maryland and Virginia near and around Washington. This suburban business is obtained by advertising, principally in the form of distributed circulars, and through contacts with inns, motor courts, tourist homes, and other places where tourists might stop in suburban and outlying areas. Limousine service is ordinarily available for passengers within the Washington commercial zone. Such passengers as applicant obtains beyond that zone are accommodated either

8

by having the passengers make their own way to a zone point or by convoying them. Convoying means that applicant provides a vehicle to guide them, in their own automobiles, to a point where his exempt service begins.

I.3. If the authority here sought is granted, applicant proposes to continue his present limousine sightseeing service between points in the Washington commercial zone and to augment it with a bus sightseeing service from the Virginia and Maryland points covered by the application. In other words, applicant would, within the entire Washington commercial zone, continue his present limousine sightseeing service; but he would, at the Maryland and Virginia points covered by this application, provide a bus service for sightseeing operations. Since some of these Maryland and Virginia points are within the Washington commercial zone, and some are beyond that zone, it would mean that, at certain Maryland and Virginia points inside that zone, applicant would have available both a limousine and a bus service for sightseeing; but that, at certain other Maryland and Virginia points outside that zone, he would have available only the proposed bus service.

I.4. Charter operations are not involved. The proposed bus operations would be special operations, for sightseeing purposes, conducted over irregular routes; and each passenger

would be required to obtain an individual ticket. Reference to certain highways in the application is intended to include sources of business, such as inns and motor courts, situated along those highways as there would be little or no demand for service elsewhere.

- I. 5. Applicant foresees that three or four busses would eventually be needed for this business. His net worth is almost \$16,000, which includes five limousines valued at \$8,200, and \$2,500 in cash. Applicant is satisfied that he can finance the purchase of the needed busses, and he has been assured of financial assistance by certain private parties.
- I. 6. Ten persons testified in support of the application. These witnesses own or operate either inns, motor courts, or tourist homes; and these facilities accommodate travelers. Many of these tourists are interested in the points of interest in and around Washington. Some of these tourists use their own automobiles, and others use the available services of the different sightseeing companies. One point these witnesses attempted to make was that many possible sightseers are reluctant to drive their own automobiles into Washington in order to make connections with a sightseeing tour. Another point is that some of these persons resist

the idea of using regular bus service to and from Washington. Some of the witnesses attempted to make the further point that satisfactory bus service is not readily available at their places of business. Several witnesses pointed out the fact that, among these tourists, there often are young children and elderly persons. Several witnesses allege a possible loss of business, because, they say, some sightseers leave a day or more earlier than they would if a sightseeing service were available at their doors. Some witnesses also stressed the fact that some of their guests are in groups, like school groups, and that, by means of a bus service, they would be able to do their sightseeing as a group. All these witnesses are of the opinion that there is a public need for the sightseeing bus service proposed by applicant and all would, by the sale of tickets and otherwise, bring this service to the attention of their guests.

I.7. Eight motor common carriers of passengers opposed the application with testimony. One of these is Richmond Greyhound Lines, which operates, among other points, between Washington and Richmond, Va., over U.S. Highway 1. About 26 schedules are operated daily in each direction between these points, and many of these include two or more busses. Some busses make only limited stops, while others make all stops. No sightseeing service is conducted.

I.8. Capitol Greyhound Lines operates, among other points, between Washington and Winchester, Va., over Virginia Highway 7, from Falls Church, Va., to Winchester. It operates seven schedules daily in each direction; and some of these schedules, particularly on weekends, include more than one bus. These busses make all designated highway stops. The carrier has no sightseeing service, but it provides busses for chartering. In this charter service, many groups are transported to Washington, especially in the spring.

I.9. Pennsylvania Greyhound Lines operates, among other points, between Washington and Baltimore, Md., over U.S. Highway 1. It operates over 25 schedules daily in each direction between these points. In many instances, schedules include more than one bus. Some busses make only limited stops, while others make all designated highway stops. Busses are available for chartering, but sightseeing service is not conducted.

I.10. Capital Transit Company provides mass transportation service in the District of Columbia and into Maryland as far as Rockville on U.S. Highway 240 and as far as College Park on U.S. Highway 1. As a part of its business, it offers and provides a sightseeing bus service. These tours ordinarily start from the District of Columbia and extend

into Virginia as far as Mount Vernon. Only one instance was recited of a pickup outside the District of Columbia, and that was at Rockville. This service will only be provided subject to a minimum of 25 individual fares.

I.11. Blue and Grey Motor Tours, Incorporated, in business about 40 years, holds authority for sightseeing operations from the Washington commercial zone to all points in Maryland and Virginia. However, as a matter of practice, it limits its present operations to tours within the District of Columbia and tours from the District to such nearby points in Virginia as Arlington Cemetery, Alexandria, and Mount Vernon. For the convenience of persons stopping outside the District, it provides free parking in a lot near the Union Station in Washington, and its busses pick up prospective passengers at the different bus terminals in Washington. In past years, it obtained a substantial amount of business from the suburban areas of Washington, but this business has been largely lost, allegedly due to additional competition. The company owns and operates a number of limousines and about 50 busses. In busy seasons, it employs up to 140 persons.

I.12. Washington-Virginia-Maryland Coach Company operates mass transportation service over numerous bus routes between the District of Columbia and points in Arlington and Fairfax Counties, Va. No sightseeing service is performed.

- I.13. A. B. & W. Transit Company operates mass transportation service over several bus routes between points in Virginia and the District of Columbia, including U.S. Highway 1 between Washington and Fort Belvoir, Va. The company owns 197 busses. Since its routes pass many points of interest to tourists and sightseers, its passengers include some sightseers. However, it does not perform a sightseeing service.
- I.14. Diamond Tours, Inc. has been in the sightseeing business 11 years. Its operations are within the District of Columbia and from the District to points of interest in Maryland and Virginia, including Arlington Cemetery, Alexandria, and Mount Vernon. It uses both busses and limousines. Its passengers ordinarily include a relatively small number from Washington suburban points.
- I.15. It was further shown by protestants generally that, under the so-called exemption provisions of section 203(b)(2), a large number of persons operate limousines within the Washington commercial zone in sightseeing services similar to those now conducted by applicant.
- I.16. The joint board recommended that the application be denied. In his exceptions, applicant argues that the record shows a positive need for the proposed service; that the

needed service cannot be supplied adequately by carriers already operating in this territory; and that the application should consequently be granted. He contends that, in recommending denial of the application, the joint board ignored the evidence and decided the matter on general principles not based on the record. Interveners, in reply, express doubt that applicant could, in the manner proposed, operate successfully and profitably; and they contend that, as a whole, the existing services should be found adequate for all present and prospective requirements of the public.

¶17. We are not wholly satisfied from this record that applicant could set up and successfully maintain the operation as proposed; nor are we satisfied that the operation would be a profitable one for applicant or a practical one for the public. In any event, and aside from this, we are not convinced that the operation is one required by public convenience and necessity. In addition to the great number of limousine operators providing sightseeing services within the Washington commercial zone, there are at least five or six large sightseeing companies which provide bus sightseeing service within the District of Columbia and between the District and numerous outlying points of interest, such as Arlington Cemetery, Alexandria, and Mount Vernon. While these companies do not pick up or discharge passengers outside the District, they have always included among their

passengers some persons who are guests of inns, motor courts, or tourist homes at Maryland and Virginia points in the suburban areas of the District. As a convenience to these persons, these companies make their services readily available, by picking up passengers at the various bus terminals in Washington and, in some instances, by providing free parking for persons who drive into Washington in their own automobiles. Some of these companies also have branch offices in the terminal buildings of the principal bus lines that operate from and to Washington. All these sightseeing bus companies complain of severe and increasing competition; and there is no doubt that, as alleged, this competition is being aggravated by the increasing number of limousine operators which operate under the exemption provisions of section 203(b)(2). The operation proposed by applicant would, in our opinion, further endanger the position of these sightseeing bus companies; and it would, as alleged by interveners, have some detrimental effects upon the mass transportation companies and the other bus companies that provide regular bus services between Washington and points in the Washington suburban area. In these circumstances, we conclude that the available services as a whole are reasonably adequate for the sightseeing public and that the relatively small advantage that would inure to the public from the proposed operation is far outweighed by the greater disadvantages to the existing carriers and to the

public service situation as a whole that would result from the operation proposed. The application will consequently be denied.

I.18. We find that applicant has failed to establish that the present or future public convenience and necessity require the proposed operation, and that the application should be denied.

An appropriate order will be entered.

COMMISSIONER CROSS dissents.